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# PRACTICE AND FORMS

OF

## LAW AND EQUITY

### A TEXT BOOK

FOR ALL SCHOOLS IN WHICH STENOGRAPHY  
AND TYPEWRITING ARE TAUGHT,

ALSO

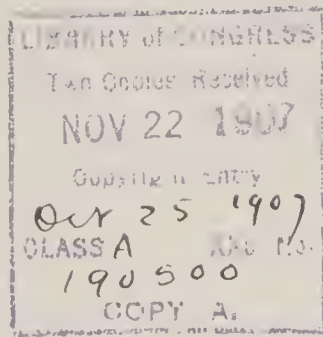
HELPFUL TO LAW STUDENTS  
AND BEGINNERS IN THE LEGAL PROFESSION.

BY  
FRANCIS M. <sup>*arison*</sup>NICHOLS,  
"MEMBER OF THE LUZERNE COUNTY BAR.

1907  
THE RAEDER PRINTING COMPANY,  
WILKES-BARRE, PA.

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BY FRANCIS M. NICHOLS

## PREFACE.

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Chiefly, this work is intended for use in all schools in which stenography and typewriting are taught. The need of a work of this character in the curriculum of such schools for a long time has been realized, both by teachers and pupils.

The service undertaken by the stenographer for the legal profession, and in offices in which the clerical business of courts is transacted, requires knowledge and expertness in the use of this knowledge that cannot be obtained in a course of study not affording special opportunity to learn them. In this service the stenographer must use terms, phraseology, composition and forms to which, in all his preliminary education, he has never been introduced. He begins the few months of study and practice to fit himself for the occupation an absolute stranger to them. Unless this lack of education is overcome by special study and instruction he goes into the service of lawyers and official stations illy prepared to do the work demanded of him.

The course of study and practice presented in this book includes knowledge technical and practical, and full illustrations of its application. Legal terms and phrases are clearly defined, and the uses made of them in judicial proceedings are exhibited in a great variety of forms. As shown in the analysis furnished in the index, the beginning of the journey is in a definition of the power vested in the courts, and an explanation of the judicial districts of the State.

From this point to the end, along the track, opportunity is afforded the learner to become familiar with legal terms, as to their orthography, meaning and application; the machinery, in all its parts, through which the work of courts and the legal profession is

performed; the peculiar forms used by the lawyers in their public and office business; the names and construction of all instruments perpetuated in public records, and the dockets in which these instruments are recorded. In brief, the aim of this book is to give the student opportunity to become fitted to do the work of a law stenographer in a manner satisfactory to the most exacting employer, and to furnish service entitling him to the highest rate of compensation.

Also from this work can be gathered information valuable to law students and beginners in the practice of the legal profession. For the special benefit of the latter, in addition to those with which the members of the profession are familiar, forms rendered necessary by recent legislation are furnished.

For several forms of praecipes, declarations and pleas in this book, I am indebted to the excellent work entitled "Practice in the Courts of Pennsylvania," of which the late F. Carroll Brewster is author, and to "Dunlap's Book of Forms."

FRANCIS M. NICHOLS.

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# PRACTICES AND FORMS OF LAW AND EQUITY.

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## COURTS THROUGH WHICH THE JUDICIAL POWER IS ADMINISTERED.

---

Like the National Government, the powers vested in the Government of this Commonwealth are Executive, Legislative and Judicial. This work relates, alone, to the power last named. Hence the others are not defined.

**Courts.** Courts of this Commonwealth consist of: I, Supreme Court; II, Superior Court; III, Court of Common Pleas; IV, Court of Oyer and Terminer and Jail Delivery; V, Court of Quarter Sessions of the Peace; VI, Orphans' Court.

Excepting the Superior Court, the maintenance of all these courts is enjoined by the Constitution of our State. But in this instrument the Legislature is given power to establish other courts. Through the exercise of this power the Legislature, in 1895, established the Superior Court.

## SUPREME COURT.

**Jurisdiction of the Supreme Court.** Territorial jurisdiction embraces the whole State. As to its subjects, the jurisdiction is divided into Original and Appellate. Original Jurisdiction is the jurisdiction which attaches to the beginning of actions and other judicial proceedings. Appellate Jurisdiction is the jurisdiction which a superior court has to re-hear causes that have been decided in inferior courts.

**Original Jurisdiction of Supreme Court.** This court has original jurisdiction, in cases of injunction, where a corporation is defendant, of *habeas corpus*, of *mandamus* to courts of inferior jurisdiction, and *quo warranto* as to all officers of the Commonwealth whose jurisdiction extends over the State.

*Habeas corpus* is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner at a certain time and place, with the day and cause of his caption and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf.

*Mandamus* is a writ to compel inferior courts, public officers and corporations to do some particular thing therein specified, and which appertains to their office or duty.

*Quo warranto* is a writ by which the Government commences an action to recover an office or franchise from the person or corporation in possession of it.

**Appellate Jurisdiction of Supreme Court.** To hear and determine (a) all manner of pleas, plaint and causes which shall be brought or removed there from any other court of this Common-

wealth, by virtue of any writ or process issued by said court, or any judge thereof, for that purpose; (b) to examine and correct all, and all manner of error of the justices, magistrates and courts of this Commonwealth, in the process, proceedings, judgments and decrees, as well in criminal as in civil pleas or proceedings, and, thereupon, to reverse, modify or affirm such judgments and decrees, or proceedings, as the law doth or shall direct; (c) and, generally, to minister justice to all persons, in all matters whatsoever, as full and ample, to all intents and purposes, as the said court has heretofore had power to do, under the Constitution and laws of this Commonwealth; (d) and to issue execution or other process for the recovery of costs which have accrued, or may accrue in said Supreme Court, as well as in all cases which have been heretofore decided.

#### DISTRICTS IN WHICH THE SUPREME COURT SITS.

##### **Eastern District.**

Bedford,	Crawford,	Lehigh,
Berks,	Cumberland,	Luzerne,
Blair,	Delaware,	Lycoming,
Bradford,	Elk,	McKean,
Bucks,	Erie,	Mifflin,
Cameron,	Fayette,	Monroe,
Carbon,	Franklin,	Montgomery,
Chester,	Huntingdon,	Montour,
Centre,	Juniata,	Northampton,
Clearfield,	Lackawanna,	Northumberland,
Clinton,	Lancaster,	Philadelphia,
Columbia,	Lebanon,	Perry,
Pike,	Sullivan,	Warren,
Potter,	Susquehanna,	Wayne,
Schuylkill,	Tioga,	Wyoming,
Snyder,	Union,	York.

##### **Middle District.**

Adams,	Dauphin,	Fulton.
--------	----------	---------

**Western District.**

Allegheny,	Forest,	Somerset,
Armstrong,	Greene,	Venango,
Beaver,	Indiana,	Washington,
Butler,	Jefferson,	Westmoreland.
Cambria,	Lawrence,	
Clarion,	Mercer,	

**TERMS OF THE SUPREME COURT AND WHERE IT SITS.****Eastern District.**

Term each year is twenty-one weeks, beginning the first Monday of January. Session held in the city of Philadelphia.

**Middle District.**

Term each year is one week, from the twenty-first Monday after the first Monday in January. Session held in the city of Harrisburg.

**Western District.**

Term each year is three weeks, from the second Monday in October. Session held in the city of Pittsburg.

**Bench of the Supreme Court.** Consists of seven judges. If he so long behaves himself well, the term of service of each is twenty-one years, and the judge whose term first expires is Chief Justice. The annual salary of the Chief Justice is \$10,500, and of each of the other judges, \$10,000. The judges now in service are: Chief Justice John T. Mitchell; Justices D. Newlin Fell, J. Hay Brown, S. Leslie Mestrezat, William P. Potter, John P. Elkins, and John Stewart.

**Appeals to the Supreme Court.** To transfer a cause into this court appeal must be taken. Appeal is the removal of a cause from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and re-trial. Right to the appeal must be exercised within six months after the entry of judgment or final decree or order. The party appealing is called appellant, and the other party appellee. To get the appeal into the court a praecipe, affidavit and bond must be filed with the prothonotary of that court. Following are the forms of the same:

**Praecipe and Affidavit.**

IN THE SUPREME COURT OF PENNSYLVANIA.

FOR THE EASTERN DISTRICT.

EDWARD OVERTON,

*Plaintiff,**vs.*

B. M. PECK,

*Defendant,*Court of Common Pleas of the  
County of Luzerne.

October Term, 1907.

No. 97.

Enter appeal on behalf of the defendant from judgment of the  
Court of Common Pleas, of the County of Luzerne.

H. W. PATRICK,

*Attorney for Appellant.*TO ALEX. K. MCCLURE, *Prothonotary,*

Supreme Court, Eastern District.

COUNTY OF LUZERNE, SS. :

B. M. Peck, being duly sworn, saith that said appeal is not taken  
for the purpose of delay, but because appellant believes he has suf-  
fered injustice by the judgment from which he appeals.

Sworn and subscribed this first  
day of May, A. D. 1907.

HENRY WALSER,  
*Prothonotary.*

**Bond.**

EDWARD OVERTON,  
*Appellee,*  
*vs.*

B. M. PECK,  
*Appellant.*

C. P. of Luzerne County.

No. 97, October Term, 1907.

Appellant having appealed from the judgment of the Court of Common Pleas, of the County of Luzerne, entered 2d day of January, 1907, to the Supreme Court, comes into court with his sureties, and they acknowledge themselves bound and indebted to the Commonwealth of Pennsylvania, for the use of the said Edward Overton, in the sum of one thousand dollars, to be levied of their property, real and personal, to be paid said obligee, his certain attorney or assigns.

UPON THIS CONDITION, That if the said appellant shall prosecute the appeal with effect, and abide the order or decree of the Appellate Court, and pay all costs and damages awarded by the Appellate Court, or legally chargeable against said appellant, and pay all damages for injuries suffered by appellees from the time of the decree entered, and all mesne profits accruing after judgment, then the above obligation to be void, or else to remain in full force and virtue.

Sealed and delivered the first  
 day of May, A. D. 1907. }

In presence of

P. J. MCPHERSON.

B. M. PECK (L. S.)

HEZEKIAH PITCHER (L. S.)

HENRY ROCKWELL (L. S.)

Following are the indorsements used on the papers required in appeals to the Supreme Court:

No.

January Term, 190

Supreme Court of Pennsylvania,  
EASTERN DISTRICT.

---

EDWARD OVERTON,

vs.

B. M. PECK.

APPEAL AND AFFIDAVIT.

H. W. PATRICK,

*Attorney for Appellant.*

C. P.

Term, 1907.

EDWARD OVERTON,

VS.

B. M. PECK.

APPEAL BOND.

## SUPERIOR COURT.

**Territorial Jurisdiction.** Embraces the whole State.

**Original Jurisdiction of Subjects.** May issue writs of *habeas corpus*.

**Exclusive and Final Appellate Jurisdiction.** (1) Of all proceedings in the Court of Quarter Sessions or before any judge thereof, except cases involving the right to a public office. (2) Of all proceedings in the Court of Oyer and Terminer and Jail Delivery, except cases of felonious homicide. (3) Of all other actions, claims or disputes of every kind, including distributions in the Common Pleas, at law or in equity, whether originating therein or reaching that court by appeal or certiorari, from a justice of the peace or alderman or magistrate, if the value of the real or personal property, or the amount of money really in controversy in any single action or claim, is not greater than \$1,500, exclusive of costs, except actions and proceedings which are brought, authorized or defended by the Attorney General in his official capacity, and except, also, cases involving the right to a public office. (4) Of all claims, disputes or other proceedings, including distributions in the Orphans' Court, except those in which the Attorney General appears in his official capacity, and those in which the amount really in controversy in a single claim is greater than \$1,500, exclusive of costs. (5) Of any case whatever, civil or criminal, at law or in equity, or in the Orphans' Court, except felonious homicide, in which the parties or attorneys filed a stipulation in the proper court below, at any stage of the proceeding, agreeing that the case may be heard and decided by the Superior Court, although the case would otherwise have been appealable directly to the Supreme Court.

Nevertheless, in any action or proceeding whatever above, committed to the final and exclusive decision of the said court, there may still be an appeal from its judgment to the Supreme Court.

First. If the jurisdiction of the Superior Court is in issue ; or,

Second. If the case involves the construction or application of the Constitution of the United States, or of any statute or treaty of the United States ; or,

Third. If the case involves the construction or application of the Constitution of Pennsylvania ; or,

Fourth. If the appeal to the Supreme Court be specially allowed by the Superior Court itself, or by any one justice of the Supreme Court.

**The Bench of.** Is composed of seven judges. The term of each is ten years ; annual salary of each \$9,000, and the one whose commission has priority in time is the President Judge. The judges now members of the bench of this court are: President Judge, Charles E. Rice ; Judges, William D. Porter, John J. Henderson, Thomas A. Morrison, George B. Orlady, John B. Head and James A. Beaver.

**Appeals.** The method and effect of appeals are the same as provided in respect to the Supreme Court. Following are the forms used in taking an appeal from this court :

**Praeceptum and Affidavit.**

IN THE SUPERIOR COURT OF PENNSYLVANIA,  
AT SCRANTON.

---

GEORGE THOMPSON	}	In the Common Pleas Court,
<i>vs.</i>		County of Franklin.
HENRY VAN DIKE.		No. 600, January Term, 1906.

---

And now, first of March, 1907, George Thompson, above-named, appeals from the decree of the Court of Common Pleas of the County of Franklin, in the above entitled cause to the Superior Court of Pennsylvania.

FRANKLIN COUNTY, ss.:

George Thompson, being duly sworn according to law, doth depose and say that the above appeal is not intended for delay, but because the appellant firmly believes he has suffered injustice by the decree from which he appeals.

Sworn and subscribed before me this	}	DAVID ELKINS,
1st day of March, A. D. 1907.		<i>Prothonotary.</i>

Enter the above appeal in the Superior Court.

TO SAM. H. STEVENS, ESQ.,

Prothonotary of Superior Court, Scranton District.

THOMAS CHASE,  
*Attorney for Appellant.*

**Bond.**

IN THE COMMON PLEAS COURT FOR THE  
COUNTY OF FRANKLIN, STATE OF PENNSYLVANIA.

---

GEORGE THOMPSON

*vs.*

HENRY VAN DIKE.

No. 600, January Term, 1906.

Appeal of George Thompson,  
Plaintiff, from the Decree of  
said Court.

---

KNOW ALL MEN BY THESE PRESENTS, That we, Henry Johnson, Charles Heminway and George Thompson, are held and firmly bound unto the Commonwealth of Pennsylvania, to the use of all parties interested, in the sum of two thousand dollars, lawful money of the United States, to be paid to the said Commonwealth, to the use of the party or parties entitled thereto, or his certain executors, administrators or assigns, being double the amount of said order, judgment or decree, and all costs accrued and likely to accrue, to which payment, well and truly to be made and done, we do bind ourselves, our heirs, executors and administrators, and every one of them, firmly by these presents.

Sealed with our seals and dated this first day of March, A. D. 1907.

Whereas, the said George Thompson has appealed to the Superior Court of Pennsylvania from the decree of the Court of Common Pleas, No. one, of the County of Franklin, in the above stated suit or proceedings.

Now, the condition of this obligation is such, that if the said appellant will prosecute this appeal with effect, and will pay all costs and damages awarded by the Appellate Court, or legally chargeable against him, then this obligation to be void, otherwise to remain in full force and virtue.

GEORGE THOMPSON (Seal).

HENRY JOHNSON (Seal).

CHARLES HEMINWAY (Seal).

Sealed, signed and delivered in  
the presence of }

EDWARD SMITH,

THOMAS A. HENDRICKS.

Following are the indorsements on papers required in appeals to the Superior Court:

No.

January Term, 190

## Superior Court of Pennsylvania

---

GEORGE THOMPSON,

vs.

HENRY VAN DIKE.

APPEAL AND AFFIDAVIT.

THOMAS CHASE,  
*Attorney for Appellant.*

No.

Term, 190

GEORGE THOMPSON,

vs.

HENRY VAN DIKE.

BOND.

(Under Sections 6 and 13, Act 1897.)

Filed

190

BOND ON APPEAL

TO THE

SUPERIOR COURT OF PENNSYLVANIA

## COURT OF COMMON PLEAS.

The remainder of this work will be devoted to the organization, practice, forms, actions, etc., of the Court of Common Pleas; the work required of a stenographer in offices in which the clerical business of this court is transacted, and in the offices of lawyers.

**Jurisdiction.** This term expresses the authority of the court to hear and determine controversies, make rules, orders, decrees, etc. The scope of the jurisdiction of the Court of Common Pleas is ascertained by statutes, as follows:

1. To hear and determine all pleas, actions and suits, and causes, civil, personal, real and mixed.

2. To grant, under judicial seals, all lawful writs and processes necessary for the exercise of such jurisdiction.

3. To award process, to levy and recover such fines, forfeitures and amercements as shall be imposed, taxed or adjudged.

4. To establish such rules for regulating the practice in said court, and for expediting the determination of suits, causes and proceedings therein, as in their discretion they shall judge necessary or proper.

5. To issue writs of subpoena, under the official seal, into any county of this Commonwealth, to summon and bring before them any person to give testimony in any cause or matter depending before them.

6. To make an order fixing the number of the regular terms of the said courts, and establishing the times for holding the same.

7. To make all necessary rules and regulations for the transaction of all business brought before them.

The Court of Common Pleas, also, exercises the jurisdiction of a Court of Chancery. This jurisdiction extends to all of the following proceedings:

- I. The perpetuation of testimony.

- II. The obtaining of evidence from places not within the State.

III. The care of the persons and estates of those who are *non compos mentis*.

IV. The control, removal and discharge of trustees, and the appointment of trustees, and the settlement of their accounts.

V. The supervision and control of all corporations other than those of a municipal character, and unincorporated societies or associations, and partnerships.

VI. The care of trust moneys and property, and other moneys and property made liable to the control of the said courts.

VII. The supervision and control of partnerships.

VIII. The discovery of facts material to a just determination of issues, and other questions arising or depending in the said courts.

IX. The determination of rights to property or money claimed by two or more persons, in the hands or possession of a person claiming no right of property therein.

X. The prevention or restraint of the commission or continuance of acts contrary to law and prejudicial to the interests of the community or the rights of individuals.

XI. The affording of specific relief, when a recovery in damages would be an inadequate remedy.

XII. In all cases of dower and partition.

XIII. The settlement of disputed claims between parties claiming to be tenants in common of mines.

XIV. In suits for the foreclosure of mortgages of railroad, canal, navigation companies.

XV. The perpetuation of testimony in cases of lost or destroyed records of any of the courts of record of the Commonwealth.

XVI. In all cases over which the Courts of Chancery entertain jurisdiction on the grounds of fraud, accident, mistake or account.

**Judicial Districts.** The jurisdiction of each court is limited to certain territorial districts, called judicial districts. In other words, they are the divisions of the territory of the State in which the several subordinate courts, through which the judicial power of the Commonwealth is administered, are established. Each district is numerically designated, beginning with number one. The population of each district must be not less than 40,000. Hence some of them embrace more than one county. In the whole State there are now

56 districts, each of 47 consisting of one county, 7 of two, and 2 of three. Following is a schedule of the number and county or counties of each district, and the place in each at which the meetings of the court are held :

<i>Number of District.</i>	<i>County or Counties.</i>	<i>Court Meets.</i>
One-----	Philadelphia-----	Philadelphia
Two-----	Lancaster-----	Lancaster
Three-----	Northampton-----	Easton
Four-----	Tioga-----	Wellsboro
Five-----	Allegheny-----	Pittsburg
Six-----	Erie-----	Erie
Seven-----	Bucks-----	Doylestown
Eight-----	Northumberland-----	Sunbury
Nine-----	Cumberland-----	Carlisle
Ten-----	Westmoreland-----	Greensburg
Eleven-----	Luzerne-----	Wilkes-Barre
Twelve-----	Dauphin-----	Harrisburg
Thirteen-----	Greene-----	Waynesburg
Fourteen-----	Fayette-----	Uniontown
Fifteen-----	Chester-----	West Chester
Sixteen-----	Somerset-----	Somerset
Seventeen-----	{ Union-----	Lewisburg
		Middlesburg
Eighteen-----	Clarion-----	Clarion
Nineteen-----	York-----	York
Twenty-----	Huntingdon-----	Huntingdon
	Mifflin-----	Lewistown
	Bedford-----	Bedford
Twenty-one-----	Schuylkill-----	Pottsville
Twenty-two-----	Wayne-----	Honesdale
Twenty-three-----	Berks-----	Reading
Twenty-four-----	Blair-----	Hollidaysburg
Twenty-five-----	Clinton-----	Lock Haven
	Cameron-----	Emporium
	Elk-----	Ridgway
Twenty-six-----	Columbia-----	Bloomsburg
	Montour-----	Danville

<i>Number of District.</i>	<i>County or Counties.</i>	<i>Court Meets.</i>
Twenty-seven-----	Washington-----	Washington
Twenty-eight-----	Venango-----	Franklin
Twenty-nine-----	Lycoming-----	Williamsport
Thirty-----	Crawford-----	Meadville
Thirty-one-----	Lehigh-----	Allentown
Thirty-two-----	Delaware-----	Media
Thirty-three-----	Armstrong-----	Kittanning
Thirty-four-----	Susquehanna-----	Montrose
Thirty-five-----	Mercer-----	Mercer
Thirty-six-----	Beaver-----	Beaver
Thirty-seven-----	{ Warren----- Forest-----	Warren
		Tionesta
Thirty-eight-----	Montgomery-----	Norristown
Thirty-nine-----	Franklin-----	Chambersburg
Forty-----	Indiana-----	Indiana
Forty-one-----	{ Juniata----- Perry-----	Mifflinstown
		New Bloomfield
Forty-two-----	Bradford-----	Towanda
Forty-three-----	{ Pike----- Monroe-----	Milford
		Stroudsburg
Forty-four-----	{ Wyoming----- Sullivan-----	Tunkhannock
		Laporte
Forty-five-----	Lackawanna-----	Scranton
Forty-six-----	Clearfield-----	Clearfield
Forty-seven-----	Cambria-----	Ebensburg
Forty-eight-----	McKean-----	Smethport
Forty-nine-----	Centre-----	Bellefonte
Fifty-----	Butler-----	Butler
Fifty-one-----	{ Adams----- Fulton-----	Gettysburg
		McConnellsburg
Fifty-two-----	Lebanon-----	Lebanon
Fifty-three-----	Lawrence-----	New Castle
Fifty-four-----	Jefferson-----	Brookville
Fifty-five-----	Potter-----	Coudersport
Fifty-six-----	Carbon-----	Mauch Chunk

## OFFICERS OF THE COURT.

**Judges.** A judge is a public officer elected to preside and administer the law in a court of justice; the chief member of a court and charged with the control of proceedings and the decision of questions of law or discretion. In every judicial district consisting of one county, the court must have a President Judge, and whenever the Legislature deems it necessary for the expeditious transaction of the business of the court in any district, they may authorize the installment of one or more Additional Law Judges therein, all of whom, like the President Judge, and all those of the Supreme and Superior Courts, must be persons learned in the law. In districts composed of more than one county, besides the President Judge, there are two Associate Judges for each county, not learned in the law. The term of each judge of this court is ten years, and the annual salary of each as follows:

Eight thousand five hundred dollars in the first and fifth judicial districts.

Seven thousand five hundred dollars in district consisting of Dauphin County.

Six thousand dollars in all judicial districts having a population of 90,000 and less than 500,000, and where, in such a district there is only one judge, \$1,000 additional.

Five thousand dollars in all other judicial districts having a population of less than 90,000.

The compensation of each Associate Judge is as follows: Those whose attendance at court does not exceed four weeks per annum, the sum of \$150.

Those whose attendance at court exceeds four weeks, and does not exceed six weeks, \$180.

Those whose attendance at court exceeds six weeks, and does not exceed eight weeks, \$250.

Those whose attendance at court exceeds eight weeks, and does not exceed ten weeks, \$300.

Those whose attendance at court does not exceed twelve weeks, \$360.

Those whose attendance exceeds twelve weeks, \$420.

Following is the number of Law Judges of Common Pleas in each judicial district, and the salary paid to each:

No. Dist.	Pres. Judge	Additional Law Judge	Salary of Each	Total Salary
1	Five	Ten	\$8,500	\$127,500
2	One	One	6,000	12,000
3	One	One	6,000	12,000
4	One		5,000	5,000
5	Four	Eight	8,500	102,000
6	One		7,000	7,000
7	One		5,000	5,000
8	One	One	6,000	12,000
9	One		5,000	5,000
10	One	One	6,000	12,000
11	One	Three	6,000	24,000
12	One	One	7,500	15,000
13	One		5,000	5,000
14	One	One	6,000	12,000
15	One	One	6,000	12,000
16	One		5,000	5,000
17	One		5,000	5,000
18	One		5,000	5,000
19	One	One	6,000	12,000
20	One		7,000	7,000
21	One	Two	6,000	18,000
22	One		5,000	5,000
23	One	One	6,000	12,000
24	One		5,000	5,000
25	One		5,000	5,000
26	One		5,000	5,000
27	One	One	6,000	12,000
28	One		5,000	5,000
29	One		5,000	5,000
30	One		5,000	5,000
31	One		7,000	7,000
32	One	One	6,000	12,000
33	One		5,000	5,000
34	One		5,000	5,000
35	One		5,000	5,000
36	One		5,000	5,000
37	One		5,000	5,000
38	One	One	6,000	12,000
39	One		5,000	5,000
40	One		5,000	5,000
41	One		5,000	5,000

No. Dist.	Pres. Judge	Additional Law Judge	Salary of Each	Total Salary
42	One	Two	5,000	5,000
43	One		5,000	5,000
44	One		5,000	5,000
45	One		6,000	18,000
46	One		5,000	5,000
47	One		7,000	7,000
48	One		5,000	5,000
49	One		5,000	5,000
50	One		5,000	5,000
51	One		5,000	5,000
52	One		5,000	5,000
53	One		5,000	5,000
54	One		5,000	5,000
55	One		5,000	5,000
56	One		5,000	5,000

All the other Law Judges of the State are the judges of the Orphans' Court. This court is maintained in only each of certain judicial districts of the State, viz: the first, second, fifth, tenth, eleventh, twenty-first, twenty-third, thirty-eighth and forty-fifth. Altogether there are fourteen, distributed as follows: Five in the first district, one in the second, three in the fifth, and one in each of the other districts. In districts in which there are more than one judge, the judge oldest in service is President Judge, and the others are called Associate Judges. The term for which each is elected is ten years. The annual salary of the judge in each district is as follows:

In the	1st	district	-----	\$8,500
"	"	2nd	" -----	6,000
"	"	5th	" -----	8,500
"	"	10th	" -----	6,000
"	"	11th	" -----	6,000
"	"	21st	" -----	6,000
"	"	23rd	" -----	6,000
"	"	38th	" -----	6,000
"	"	45th	" -----	6,000

**Jury.** Is a certain number of men, selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them. The number of jurors re-

quired in all judicial districts other than that of Philadelphia, in the Courts of Common Pleas, is not less than 36, nor more than 60. In Philadelphia the number is not less than 48 nor more than 60. Jurors must be qualified electors of the county in which they are chosen to serve, and the law enjoins the selection of sober, intelligent and judicious persons. It is the province of the jury to determine questions of fact according to the evidence submitted to them at the trial of causes, and the instructions of the judge concerning the law applicable to these questions of fact.

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**The Prothonotary.** Is an officer of the court. Acting in this capacity it is his duty to enter, in a docket provided for that purpose, all proceedings of which a record is required; to administer oaths to witnesses and jurors, and to take into his custody the records and seal of the court, and keep the same at the place of holding such court, and in the apartments provided, by authority of law, for that purpose.

In this State the powers of the prothonotary are prescribed by statute as follows:

1. To assign and affix the seal of the respective court to all writs and process, and also to the exemplifications of all records and process therein.
2. To take bail in civil actions, depending in the respective court.
3. To enter judgments, at the instance of plaintiffs, upon the confessions of defendants.
4. To sign all judgments.
5. To take the acknowledgment of satisfaction of judgments or decrees entered on the record of the respective court.
6. To administer oaths and affirmations in conducting the business of their respective offices.

Excepting in judicial districts governed, in this behalf, by special statutes, the dockets used in the prothonotary's office, and contents of same, are as follows:

**Continuance Docket.** In this record are entered all suits begun in the Common Pleas, and brought into this court by appeals; also many other proceedings, not strictly suits or appeals. Associated with this docket is a Continuance Docket Index, in which the names of the parties connected with every proceeding are alphabetically

listed; it also contains references to the number and term of each case, and the number of the continuance docket.

**Judgment Index Docket.** In this are entered, alphabetically, names of the parties to the judgment; number and term of case; where the sum of same is certain, the amount of the judgment; whether founded on an award, verdict, transcript, or other lien; date of the beginning of interest, and costs.

**Execution Docket.** In this docket are entered the names of the parties to the judgment on which any execution process is issued; number and term of the judgment; amount of the judgment, date from which interest is payable; costs taxed in continuance docket, called face costs.

**Arbitration Docket.** Rule to arbitrate certain actions may be taken by either party to a suit. This rule, and all proceedings under it, are entered in this docket.

**Ejectment Index Docket.** This book contains transcripts of the papers filed in the case, and entries in the continuance docket. The purpose of this record is to give notice to purchasers and mortgagees of the plaintiff's claim of title to the land in dispute.

**Mechanic's Lien Docket.** This record consists of a description of the land against which the lien is filed; copy of claim of plaintiff; the names of the owner of the land, contractor, architect or builder, and the creditor or plaintiff.

**Tax Lien Docket.** This book is provided for the returns of the county commissioners of taxes unpaid within a certain time after levy of the same. The items entered are: names of parties against whom the taxes are assessed; nature of the property upon which the taxes are levied; distribution of the taxes; penalty for non-payment of same at the time appointed; description of the property; when the returns were made to the prothonotary.

**Medical Register.** The entries in this are: name of the physician; his or her place of nativity; his or her place of residence; the name of the college or university that conferred the degree of doctor of medicine; the year when such degree was conferred, and in like manner, any other degree or degrees that the physician may desire to place on the record.

**Partition Docket.** Prothonotary is required to enter in this book all the proceedings in partition, from the commencement of the same to the final judgment and decree therein.

**Sheriff's Deed Book.** It is the duty of the prothonotary to record in this book all sheriff's deeds, and to index the same in both the names of the grantor and grantee.

**Treasurer's Deed Book.** This book contains copies of deeds executed by the county treasurer for lands sold by him for the payment of taxes.

**Alien Docket.** This is a record of all foreign born people, naturalized. In it appear the names of persons admitted to citizenship; the names of the country from which each emigrated to this country; date of admission.

**Record of Suits Before Justices and Aldermen Against Boroughs, Townships and School Districts.** In this book, upon presentation of certificate, by the plaintiff, of judgment recovered before one of said magistrates, against either of said municipalities, the prothonotary must enter; name of the municipality; name of plaintiff; sum for which judgment was recovered; date of its entry; name of the justice or alderman by whom the judgment was rendered.

**Equity Docket.** Abstracts of all proceedings in equity cases are entered in this docket.

**Auditors' Report Docket.** The reports of auditors, appointed by the court to make distribution of moneys arising from sheriff's and other judicial sales, are entered in this docket.

**Court Clerk.** Is appointed by the prothonotary to serve the court, when in session, as follows:

Call the names of jurors summoned to attend court; draw from the jury box the slips of paper on which the names of jurors are written; furnish a list of the jurors drawn to the attorneys representing the parties to the trial; call the roll of the trial jurors; swear or affirm jurors and witnesses, and all other persons sworn or affirmed in open court; call the roll of the trial jurors when they return to court with their verdict, and receive, present to the trial judge,

announce and record the verdict; keep a record, in a book provided for that purpose, of all motions, petitions, etc., presented to the judges, and of all rules, orders, decrees, etc., granted or made by the judges.

**Stenographers.** In every Court of Common Pleas the appointment, by the law judges of said court, of a stenographer or stenographers is required. It is his duty to report all suits and proceedings in said courts, and also the proceedings in all the criminal courts, when employed by the law judges thereof to serve in said courts. He must be competent in the art of stenography, and, before entering upon the discharge of his duties, is required to make oath or affirmation, before the prothonotary or clerk of the court, to perform his duties with fidelity. The stenographer thus appointed is known as the official stenographer, and holds his position during the pleasure of the court. His compensation is as follows:

If not allowed an annual salary, ten dollars per day for every day present upon a trial or other proceeding, for the purpose of taking notes, by direction of any judge or judges of any of the courts, or in attendance upon any of the said judges in connection with the business of the courts, and is also allowed, in addition, such expenses and supplies as the court deems proper and necessary.

The judge or judges of the court may change the per diem compensation of the stenographer to an annual, and in such case his salary may be fixed at not less than \$1,500.00 and not more than \$3,000.00.

In addition to his per diem, or annual compensation, the stenographer is entitled to fifteen cents for each one hundred words of every copy of the stenographic notes of trials, and of other matters in connection with the business of the court, that are furnished to the court or filed of record, and five cents for each one hundred words of every copy that is given to counsel or to parties, if ordered, so that they may be typewritten at the same time with filing the copy; payment for such copies to be made by the county in which the case is pending, or for which the work is performed, upon the order of the presiding judge.

**Crier.** The judges of the courts are authorized by statute to appoint a court crier. A court crier is an officer of the court who makes proclamations: his principal duties are to announce the open-

ing of the court and its adjournment, and the fact that certain specific matters are about to be transacted; to announce the admission of persons to the bar; to call the names of jurors, witnesses and parties; to announce that witness has been sworn; to proclaim silence, when so directed, and, generally, to make such proclamations of a public nature as the judges order.

For some of the proclamations made by him regular forms are prescribed. Among these are the following:

*Opening of Court.*

Ah, yea! Ah, yea! Ah, yea! All persons bound by recognizance or otherwise, to appear before the Judges of the Courts of Oyer and Terminer, General Jail Delivery, Court of Quarter Sessions of the Peace and Common Pleas, held here this day, in and for the County of Carbon, let them draw nigh and give their attention, and they shall be heard. God save the Commonwealth and this Honorable Court.

*Closing Court.*

Ah, yea! Ah, yea! Ah, yea! All you good people who have given your attention here this day will now depart, and give your attention here at ten o'clock a. m. to-morrow, at which time and place this court now stands adjourned.

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**Tipstiffs.** The judges have power to appoint as many tipstiffs as may be necessary to attend upon the court. These officers are called tipstiffs because, when on duty, they are required to carry long staffs, tipped with metal crowns or caps, in ancient times the badge of a constable. Their duty is to wait upon the court when it is in session, preserve order, serve processes and guard juries.

EQUITY.

**Court of Chancery or Equity.** A court which administers justice according to the rules of equity. As a separate tribunal this court does not exist in this State. Its jurisdiction and powers, as already shown, are vested in the Court of Common Pleas. The hearings and trials, in cases within the equitable jurisdiction of this court, are had before the judge sitting as chancellor, or before a referee, the office of master, except in proceedings whose decrees or interlocutory orders are to be executed, or their execution supervised by an officer of the court, having been discontinued.

**Commencement of Suits, Etc., in the Equity Jurisdiction.** All suits and all other proceedings are begun by filing, in the Prothonotary's office, a printed bill.

**Bill and Its Structure.** A bill is a complaint addressed to the Honorable, the Judges of the Court of Common Pleas. (1) Must be expressed in as brief and succinct terms as it reasonably can be, and contain no unnecessary recitals of deeds, documents, contracts or other instruments, or any other impertinent matter, or any scandalous matter not relevant to the suit. (2) The introductory part of the bill must contain the names of all the parties, plaintiffs and defendants, by and against whom it is brought. In the title must be, viz: "In the Court of Common Pleas, sitting in equity." "Between A B, plaintiff, and C D, defendant." "To the Honorable, the Judges of the said Court, your orator complains and says." (3) The bill must be divided into paragraphs, consecutively numbered, and contain a succinct statement of the facts upon which the plaintiff asks relief, and, at his option, the facts which are intended to avoid an anticipated defence, such averments as may be necessary under the rules of equity pleading, to entitle the plaintiff to relief, the prayer in paragraphs, for relief, and for orders, writs or process.

**Form of Bill of Complaint.**

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY,  
SITTING IN EQUITY.

R. C. MITCHELL	}	No.	January Term,
vs.			
THOMAS EVANS and HENRY EVANS, doing business in the firm name of Evans Bros.	}		1900.

*To the Honorable, the Judges of the said Court:*

Your orator complains and says:

First. That your orator resides and owns considerable valuable real estate in the village of Plainsville, this county, which said real estate consists of vacant and improved building lots.

Second. That the respondents, some time during the two years last past, established a factory for manufacturing fertilizers from bones, near the main street of said village, distant from the residence of your orator and his family about one thousand feet, and in the immediate neighborhood of a large number of residences and the said lots of your orator, and the same operated until some time during the summer last past, when the building containing the said factory was destroyed by fire.

Third. That the respondents have commenced rebuilding the aforesaid building at the place aforesaid, and propose to resume therein the operation of the aforesaid factory.

Fourth. That during the time past, when the said factory was in operation as aforesaid, the odors issuing therefrom were of the most offensive character and injurious to the health, and in consequence thereof the lives of your orator and his family were made uncomfortable, and the value of your orator's real estate was greatly depreciated during all the time the said factory was operated as aforesaid.

Fifth. That immediately before or about the time the respondents commenced rebuilding the building destroyed by fire aforesaid, your orator notified the said respondents that he would resist, by every lawful means, any attempt on the part of said respondents to resume operating the said factory at the place aforesaid, and in reply thereto the said respondents notified your orator that they proposed to rebuild the said building at the place aforesaid, and, as soon as the same is completed, resume the operation of the said factory.

Sixth. That the machinery and all other facilities and equipments employed in the factory operated in the building destroyed as aforesaid, the respondents propose to use in the building now in process of erection, and the same cannot be operated without producing the odors aforesaid.

Seventh. That the aforesaid factory cannot be operated under any conditions, or with the best equipments and facilities, without producing the most offensive odors, injurious to the health and destructive of the comfort of your orator and his family, and causing great depreciation of the value of your orator's aforesaid real estate.

Eighth. That unless the respondents are enjoined from operating the said factory, at the place aforesaid, your orator will suffer irreparable damage.

## PRAYER.

In consideration whereof your orator prays:

First. That the respondents be enjoined and restrained, by the injunction of this Honorable Court, from operating the aforesaid factory at the place aforesaid.

Second. That the respondents be enjoined and restrained, by injunction of this Honorable Court, from operating the said factory in such a manner as to produce offensive odors, injurious to the health or comfort of your orator and his family.

Third. That the respondents be enjoined and restrained, by the injunction of this Honorable Court, from operating the said factory in such a manner as to depreciate the value of your orator's said real estate.

Fourth. That such other and further relief in the premises be granted as may seem agreeable in equity and good conscience.

D. A. FELL, JR.,  
*Solicitor for Plaintiff.*

LUZERNE COUNTY, SS.:

R. C. Mitchell, orator in the foregoing bill, being duly sworn, deposes and says that the facts set forth in said bill are true so far as the same are stated on his own knowledge, and that so far as he speaks from information of others, he verily believes them to be true.

R. C. MITCHELL.

Sworn and subscribed before me }  
this first day of October, 1900. }

IRA KIRKENDALL,  
*Mayor.*

**Appendix.** If copies of any writings referred to in the bill are furnished, the appendix in the back part of the book is the place for them.

**Notice.** Notice of the filing of the bill, and a certified true copy of the same, must be given to each defendant personally, or left at his dwelling house with an adult member of his family, or the family in which he resides. The notice must be indorsed on the bill, of which the following is the form, and also of the remainder of the whole indorsement:



Failure of defendant to comply with this notice, within thirty days after service of the same, gives plaintiff the right to cause the bill to be taken *pro confesso*. This right is exercisable in a praecipe, addressed to the Prothonotary, directing him to enter judgment *pro confesso*, against the defendant for one of either appearance or answer, or of both.

**Pro Confesso.** Means, as confessed; as if conceded, taken for granted. In other words, judgment *pro confesso* ascertains the truth of all allegations of fact, and, if they are sufficient in law or equity to entitle the plaintiff to the decree prayed in his bill, it will be granted without requiring of him any evidence not furnished in the bill. To avoid such a judgment against him, the defendant, as already shown, must enter an appearance, demurrer or answer within the time appointed for the purpose.

**Appearance.** This act is performed through a praecipe directing the prothonotary to enter the name of the defendant's attorney in the record of the case.

**Demurrer.** An allegation that, admitting the facts in plaintiff's bill to be true, as stated by him, he has not shown cause why the defendant should be compelled by the court to proceed further. In other words, that the facts stated in the bill do not, in the absence of any denial on the part of the defendant, entitle the plaintiff to the decree prayed for in his bill.

**Form of the Demurrer.**

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY,  
SITTING IN EQUITY.

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<p>ROBERT C. MITCHELL, <i>Plaintiff.</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THOS. EVANS and HENRY EVANS, doing business in firm name of Evans Brothers, <i>Defendants.</i></p>	<p style="font-size: 4em;">}</p>	<p>No.</p> <p>January Term, 1900.</p>
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Demurrer of defendants to the bill of complaint of Robert C. Mitchell, above named plaintiff.

The defendants demur to the whole bill on the ground that the complainant has not, by his said bill, made such a case as entitles him, in a Court of Equity, to any discovery or relief from or against these defendants, touching the matter contained in the said bill, or any of such matters; the case set out in said bill being simply such as entitles said complainant to an action of trespass to recover damages.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants do demur to the said bill, and to all matters and things therein contained, and pray the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

THOMAS EVANS,  
HENRY EVANS.

STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE, } ss. :

Thomas Evans, one of the above named defendants, being duly sworn, saith the foregoing demurrer is not interposed for delay.

THOMAS EVANS.

Sworn and subscribed before me this second day of May, 1900.

REESE LLOYD,  
*Clerk of the Courts.*

L. H. BENNETT,  
*Attorney for Defendants.*

Indorsement on the demurrer should be signed by defendants' attorney as follows :

L. H. BENNETT,  
*Attorney for Defendants.*

**Answer and Structure of the Same.** A defence in writing made by a defendant to the charges contained in a bill or information filed by the plaintiff against him. The defendant is required (1) to make answer, in the first person, to all the material allegations of the bill; (2) divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation.

### Form of Answer.

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY,  
SITTING IN EQUITY.

R. C. MITCHELL, <i>Plaintiff,</i>  v's.  THOMAS W. EVANS and HENRY W. EVANS, doing business in the firm name of Evans Brothers, <i>Defendants.</i>	No.     Term, 1900.
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*To the Honorable Judges of the said Court:*

The answer of the defendants to the said plaintiff's Bill of Complaint, now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage to the manifold errors, uncertainties and imperfections in the said bill contained, respectfully sheweth:

I. We admit that plaintiff resides and owns real estate in Plainsville, but we are not apprised of the exact amount or value thereof, and we are informed, as matter of law, that said plaintiff's ownership of vacant building lots is wholly immaterial in this case.

II. We admit that in 1899 we, and David W. Evans, established on the lands of us, the defendants, a building and machinery for grinding clean bones into a powder, known as bone dust, and used for fertilizing purposes, but we deny that it was near the main street of said village of Plainsville, or within one thousand feet of the residence of plaintiff and his family, and aver that it was between eleven and twelve hundred feet distant from said residence, and we also deny that the same was located in the immediate neighborhood of a

large number of residences, though we are informed, as matter of law, that if such were the fact it would be here immaterial, as said residences are not alleged to belong to the plaintiff. We admit that said establishment or bone mill was near certain vacant land of the plaintiff, but are informed, as matter of law, that this fact is immaterial in this case, and we also admit the operation of said bone mill until August 31, 1899, when the building was destroyed by fire.

III. We admit that we have built a new building on the site of the old one, and propose to resume the business of grinding clean bones as aforesaid, but in such a manner, however, as to produce no offensive odors injurious to the health or comfort of the plaintiff and his family.

IV. We deny the facts alleged in the fourth paragraph of the bill, and aver our information that, as matter of law, the plaintiff's allegations of the depreciation of his real estate, so far as same consists of vacant land, is immaterial.

V. We admit that about the time we began to replace the building destroyed by fire as aforesaid, the plaintiff requested us to desist from so doing, and that we refused to comply with his request, and responded that we proposed to rebuild said building and resume our operations, not, however, in any spirit of vindictiveness, nor until we had satisfied ourselves that our said operations were entirely harmless to the plaintiff, and had received the assurances of our nearer neighbors that said business was no annoyance to them.

VI. We admit the proposed use of the machinery and equipments used in the old building destroyed by fire, as charged in the sixth paragraph, but we deny that our proposed business cannot or will not be operated without producing offensive odors.

VII. We deny each and every of the facts charged in the seventh paragraph of the bill, as well as any inferences, deducible therefrom, that the continuation of our said business will in any way injure the health or comfort of plaintiff or his family, or affect the value of his real estate.

VIII. We also deny the facts charged in the eighth paragraph of the bill.

All of which matters and things we are ready and willing to aver, maintain and prove, as this Honorable Court may direct, and humbly pray to be hence dismissed, with our reasonable costs, in this behalf most wrongfully sustained.

LUZERNE COUNTY, SS.:

Thomas W. Evans and Henry W. Evans, being duly sworn, say that the facts set forth in the above answer, so far as the same are stated of their own knowledge, are true, and, as far as stated on information and belief, they verily believe them to be true.

HENRY W. EVANS,  
THOMAS W. EVANS.

Sworn and subscribed before me }  
this 2d day of June, 1900.

THAD. M. CONNIFF,  
*Justice of the Peace.*

**Replication and Structure of Same.** Reply of plaintiff, in matters of fact, to defendants' answer. It serves the purpose of a plea in an action at law, viz., produces the issue of fact to be determined in the trial of the case. The usual replication is as follows: "The plaintiff joins issue on the matters alleged in the answer."

**Decree.** The judgment or sentence of a court of equity.

### **Form of Decree.**

Now, 20th day of July, 1900, this cause having come on to be heard on motion for special injunction, and having been argued by counsel, it is ordered that, upon security being given in the sum of twenty-five hundred dollars, an injunction issue restraining the defendants, until further order, from operating the factory or mill described in the bill, in such a manner as to produce offensive odors injurious to the health or comfort of the plaintiff and his family.

CHARLES E. RICE,  
*President Judge.*

### BOND GIVEN BY PLAINTIFF IN CONFORMITY TO THE FOREGOING DECREE.

KNOW ALL MEN BY THESE PRESENTS, That we, Robert C. Mitchell, Wm. McCulloch and G. W. Mitchell, are held and firmly bound unto Thomas Evans and Henry Evans, doing business in the firm name of Evans Brothers, hereinafter called the obligees, in the

sum of twenty-five hundred dollars, lawful money of the United States of America, to be paid unto the said obligees, their certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we do bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated the 20th day of July, in the year of our Lord one thousand and nine hundred.

Whereas, an injunction has been granted at the instance of the said Robert C. Mitchell, against the said obligees, to No. 4, Term, 1900, in the Court of Common Pleas of Luzerne County, Sitting in Equity.

Now, the condition of this obligation is such that if the said obligors shall indemnify the obligees against all damages which may be done to them by reason of said injunction, then this obligation shall be void, otherwise to remain in full force and virtue.

Witness our hands and seals the day and year aforesaid.

R. C. MITCHELL (Seal).

WM. McCULLOCH (Seal).

G. W. MITCHELL (Seal).

Signed, sealed and delivered in  
the presence of  
C. H. JOHNSON.

}

**Injunction.** A prohibitory writ, issued by the authority of, and generally under the seal of a court of equity, to restrain one or more of the parties, to a suit or proceeding in equity, from doing or permitting his servants or others who are under his control, to do an act which is deemed to be unjust or inequitable so far as regards the rights of some other party or parties to such suit or proceeding.

### Form of Injunction.

LUZERNE COUNTY, SS.

THE COMMONWEALTH OF PENNSYLVANIA.

(Seal.)

TO THOMAS EVANS and HENRY EVANS,  
doing business as Evans Brothers.

Agents, workmen, laborers and servants.

*Greeting:*

Whereas, It hath been represented to us in our Court of Common Pleas, Sitting in Equity for the County of Luzerne aforesaid,

in a certain cause there pending, wherein Robert C. Mitchell is complainant, and you, Thomas Evans and Henry Evans, as Evans Brothers, are defendants, on the part of the said complainant, that he has lately exhibited his Bill of Complaint in our said Court of Common Pleas, Sitting in Equity, against you, the said defendants, praying to be relieved, touching the matter therein contained, and that thereupon motion for injunction, and hearing thereof, and upon said complainant filing a bond in the sum of twenty-five hundred dollars, with surety approved by the court, as required by the Acts of Assembly in such case made and provided, it was ordered that a preliminary injunction issue, pursuant to the prayer of the said bill, to restrain you, the said defendants, until further order, from operating the fertilizer factory or mill owned by you, and situated in the village of Plainsville, this county, in such a manner as to produce offensive odors injurious to the health or comfort of the said Robert C. Mitchell and his family.

We, therefore, in consideration of the premises aforesaid, do strictly command and enjoin you, the said defendants, your agents, workmen, laborers and servants, and all and every one of you, that you do from henceforth altogether absolutely desist from operating the fertilizer factory or mill owned by you, and situated in the village of Plainsville, this county, in such a manner as to produce offensive odors injurious to the health or comfort of the said Robert C. Mitchell and his family, until the said court shall make other order to the contrary.

Witness, the Honorable Charles E. Rice, President Judge of said court, at Wilkes-Barre, this                      day                      , in the year of our Lord 1900.

CHRISTOPHER WREN,  
*Prothonotary.*

#### TERMS OF COURT OF COMMON PLEAS.

A term of court signifies the time during which the court sits for the transaction of regular business, and the session begins when the court convenes for the term, and continues until final adjournment, either before or at the expiration of the term.

In each judicial district the law requires not less than four sessions each year, but this number may be increased by order of court. The time of each is ascertained by using the name of the month and year in which the term begins. For example, a term beginning in May, 1903, is called May Term, 1903. To indicate the order in

which proceedings are begun in any one term, a number is assigned to each. To illustrate, the first proceeding entered after the ending of May Term, 1903, is called No. 1, May Term, 1903. This number is increased by the addition of one, every time a new proceeding is begun, until the end of the term. Hence, if prior to the entry of the last proceeding 500 have been entered, the last proceeding will be numbered 501.

## ACTIONS IN THE COURT OF COMMON PLEAS.

Actions, such as are within the jurisdiction of the Court of Common Pleas, are proceedings by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong.

**Parties to Actions.** The party by whom the action is brought is called plaintiff, and the party against whom the action is brought is called defendant.

**Kinds of Action.** In respect to their objects, actions are divided into personal, real and mixed actions.

### PERSONAL ACTIONS.

Are those brought to recover debts, personal chattels or damages.

**Classes of Personal Actions.** In respect to the causes of personal actions, they are divided into Actions Ex Contractu and Ex Delicto.

**Actions Ex Contractu.** Are such as are brought to recover moneys due upon contracts and agreements.

**Actions Ex Delicto.** Are such as are brought to recover damages for tort to the person or property of the plaintiff. A tort is a legal wrong committed upon the person or property independent of contract.

**Name of Action Ex Contractu.** Is assumpsit, and in this form of action all debts due upon goods, agreements, book accounts, notes, bonds, etc., are recoverable.

**Names of Actions Ex Delicto.** Are trespass and replevin. The former lies to recover damages for injuries to the person, or to the personal or real property of another, and for the recovery of damages for the wrongful conversion of personal property. The latter is brought to recover possession of personal property unlawfully taken or detained.

## REAL ACTIONS.

Are those brought for the specific recovery of lands or other realty.

**Names of Real Actions.** Are dower, partition and ejectment. Dower is an action by a widow to enforce her right to dower. Partition is an action to compel the division of lands held by joint tenants, co-parceners, or tenants in common into distinct portions, so that they may own them in severalty. Ejectment lies for the recovery of the possession of lands.

## MIXED ACTIONS.

Are brought for the recovery of lands, together with damages for the wrongful detention and use of same.

## PROCEEDINGS IN ACTIONS.

**Praecipe.** Is an order, signed by the attorney for the plaintiff, addressed to the prothonotary, directing him to issue a particular writ. This order is the first act required of the plaintiff in the commencement of his action, whether personal, real or mixed.

**Form of Praecipe in Assumpsit.**

JOHN W. JONES	}	In the Court of Common Pleas of Luzerne County.
vs.		
PATRICK F. CONROY.		

SIR:—

Issue summons in assumpsit. Returnable at next term.

D. A. FELL,  
*Attorney for Plaintiff.*

TO BRINTON JACKSON, ESQ.,  
*Prothonotary.*

Feb. 17, 1903.

After properly folding the sheet on which this order is written, an indorsement should be placed thereon in the following form:

No. 1,

February Term, 1903.

JOHN W. JONES

vs.

PATRICK F. CONROY.

*Præcipe.*

D. A. FELL,  
Attorney for Plaintiff.

**Form of Praecipe in Trespass.**

JOHN MATHER	}	In the Court of Common Pleas of Bradford County.
vs.		
WALLACE TUTTLE.		

SIR:—

Issue summons in an action of trespass. Returnable at next term.

EDWARD OVERTON,  
*Attorney for Plaintiff.*  
February 17, 1903.

TO BENJAMIN F. PECK, ESQ.,  
*Prothonotary.*

**Form of Praecipe in Replevin.**

DAVID JOHNSON	}	In the Court of Common Pleas of Adams County.
vs.		
ARNOLD JENKINS.		

SIR:—

Issue writ of replevin for one horse and two wagons of the value of one thousand dollars. Returnable at next term.

THOMAS SMITH,  
*Attorney for Plaintiff.*  
February 17, 1903.

TO DANIEL WHITE, ESQ.,  
*Prothonotary.*

With the last above praecipe the plaintiff is required to file with the prothonotary a Replevin Bond, the form of same being as follows :

DAVID JOHNSON	}	In the Court of Common Pleas of Adams County.
vs.		
ARNOLD JENKINS.		

KNOW ALL MEN BY THESE PRESENTS, That we, David Johnson and Samuel White, both of Gettysburg, Adams County, Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania, in the just and full sum of two thousand dollars, lawful money of the United States, to be paid to the said Commonwealth for the use of the defendant and other persons legally entitled thereto, to which payment well and truly to be made and done, we do bind ourselves, and each of us, and each of our heirs, executors, administrators, and every of them, jointly and severally, by these presents.

Sealed with our seals and dated the first day of October, A. D. 1902.

Whereas, the above bounden David Johnson, having obtained a certain writ of replevin, issued out of the Court of Common Pleas of the said County of Adams, tested at Gettysburg, aforesaid, the first day of October, 1902, against Arnold Jenkins, of the said county, commanding the sheriff of said county that he should replevy and cause to be delivered unto the said David Johnson, one horse and two wagons, altogether of the value of one thousand dollars.

Now, the condition of this obligation is such that if the above bounden David Johnson shall fail to maintain his title to said goods and chattels, he shall pay to the party thereunto entitled the value of said goods and chattels, and all legal costs, fees and damages which the defendant, or other persons to whom such goods and chattels so replevied belong, may sustain by reason of the issuance of such writ of replevin, then this bond to remain in full force and virtue, otherwise to be void and none effect.

Signed, sealed and delivered	}	DAVID JOHNSON (Seal).
in the presence of		
THOMAS HIGGINS,		
THOMAS DODSON.		

SAMUEL WHITE (Seal).

(Bond of defendant, see writ of replevin.)

The plaintiff is also required to file with his praecipe ordering the issue of a writ of replevin, an affidavit of the value of the personal property named in the praecipe, of which said affidavit following is the form:

DAVID JOHNSON	}	In the Court of Common Pleas of Adams County.
vs.		
ARNOLD JENKINS.		

ADAMS COUNTY, SS.:

David Johnson, the plaintiff above named, being duly sworn, says that the value of the goods and chattels named in his praecipe and declaration in this case is one thousand dollars, as ascertained by the cost to the defendant of replacing the said goods and chattels should the issue in this action be decided in his favor.

Sworn and subscribed before me	}	DAVID JOHNSON.
the 1st May, 1907.		
JOSH BILLINGS, <i>Prothonotary</i> .		

### Form of Praecipe in Dower.

MARTHA NICHOLSON	}	In the Court of Common Pleas of Lackawanna County.
vs.		
JACOB HEMINGWAY.		

SIR:—

Issue writ of dower unde nihil habet commanding Jacob Hemingway, justly and without delay, he render to Martha Nicholson, widow, who was the wife of Peter Nicholson, her reasonable dower which falleth to her out of the freehold which was of the said Peter Nicholson, late her husband, in the city of Scranton, whereof she has nothing as she says. Returnable at next term.

GEO. S. HORN,  
*Attorney for Plaintiff.*  
February 17, 1903.

TO THOMAS MORGAN, ESQ.,  
*Prothonotary.*

**Form of Praecipe in Partition.**

CHAS. VANDER VORT

vs.

FRANK ARGUST,  
MATILDA PERRY,  
THOS. ARGUST,  
GEO. ARGUST.In the Court of Common Pleas  
of Luzerne County.

SIR:—

Issue summons in partition to answer the plaintiff of a plea wherefore, whereas the said plaintiff and the said defendants together and undivided hold a certain messuage, all that certain lot of land situated in the Borough of Plymouth, Luzerne County, Pa., bounded and described as follows, viz: Beginning at the southwest corner of lot No. 5, sold to Thos. James by D. Gardner and wife, on the west side of Gardner Street, thence along said line of lot No. 5, south sixty degrees and four minutes west 126 feet to land of Samuel Wadhams, deceased; thence along said Wadhams' land south 29 degrees 20 minutes, east 50 feet to corner of lot No. 23, owned by Benjamin Badman; thence along line of said lot No. 3, north 60 degrees and 40 minutes, east 126 feet to a corner on the west side of said Gardner Street, and thence along west side of said Gardner Street, north 29 degrees and 20 minutes, west 50 feet to the place of beginning, and containing 6,300 square feet of land, more or less; of which they, the said defendants, partition thereof between them, according to the laws and customs of the Commonwealth of Pennsylvania, to be made do gainsay, and the same to be done do not permit, unjustly and contrary to the same laws and customs. Returnable at next term.

JOHN H. DANDO,

*Attorney for Plaintiff.*

February 17, 1903.

TO BRINTON JACKSON, ESQ.,

*Prothonotary.*

**Form of Praecipe in Ejectment.**

H. P. BLACKMAN	}	In the Court of Common Pleas of Luzerne County.
<i>vs.</i>		
PETER WHITE.		

SIR:—

Issue summons in ejectment against defendant, to appear and answer to certain complaint made by H. P. Blackman, that he, the said Peter White, now has in his actual possession a lot of ground, situated in the Township of Hanover, Luzerne County, Pa., bounded and described as follows, to wit: Beginning at a corner of Keith Street, in line of lot owned by Jacob Hardware, thence south 43 degrees and 23 minutes west 103 feet to a corner of an alley 10 feet wide; thence along said alley 100 feet to a corner on an alley 10 feet wide; thence north 43 degrees and 23 minutes east 100 feet to a corner on Division Street, and thence along Division Street about 103 feet to the place of beginning; the right of possession or title to which he, the said H. P. Blackman, says is in him, and not in the said Peter White; all of which he, the said H. P. Blackman, avers he is prepared to prove, etc. Returnable at next term.

P. H. CAMPBELL,  
*Attorney for Plaintiff.*

TO BRINTON JACKSON, ESQ.,

February 18, 1903.

*Prothonotary.*

With the last-above praecipe the plaintiff is required to file an affidavit, setting forth to the best of his knowledge, information and belief, who are all the claimants of the land in dispute. The form of this affidavit is as follows:

H. P. BLACKMAN	}	In the Court of Common Pleas of Luzerne County. No 467, April Term, 1903.
<i>vs.</i>		
PETER WHITE.		

LUZERNE COUNTY, SS.:

H. P. Blackman, the above-named plaintiff, being duly sworn, says, to the best of his knowledge, information and belief, that the

names and residences of claimants of the land described in the plaintiff's praecipe, other than the parties to this action, are T. J. Jackson and Abram S. Hewitt, both of the Borough of Nanticoke, in said county.

Sworn and subscribed before me }  
this 15th March, 1905. }

H. P. BLACKMAN.

JOHN P. POLLOCK, *Alderman*.

My commission expires the first day of May, 1910.

## WRITS ORDERED IN SAID PRAECIPES.

The prothonotary, in obedience to the praecipe, is required to issue the writ mentioned in it, and thereupon it is delivered to the sheriff for execution. Following are copies of the writs required by each of the foregoing praecipes, respectively :

**Summons in Assumpsit.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA.

To the Sheriff of said County, GREETING:



We command you that you summon Philander Holcomb so that he be and appear before our Court of Common Pleas, to be holden at Wilkes-Barre, in and for said County, on the first day of June next, there to answer Thomas Jefferson of a plea of assumpsit, and have you then and there this writ.

Witness the Honorable John Lynch, President Judge of our said Court, at Wilkes-Barre, aforesaid, the 15th day of May, A. D. one thousand nine hundred and seven.

THOMAS W. TEMPLETON,  
*Prothonotary.*

**Summons in Trespass.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA.

To the Sheriff of said County, GREETING:



We command you that you summon Aaron Burr so that he be and appear before our Court of Common Pleas, to be holden at Wilkes-Barre, in and for said County, on the first day of June next, there to answer Alexander Hamilton of a plea of trespass, and have you then and there this writ.

Witness the Honorable John Lynch, President Judge of our said Court, at Wilkes-Barre, aforesaid, the 15th day of May, A. D. one thousand nine hundred and seven.

JAMES MONROE,

*Prothonotary.*

**Writ of Replevin.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA.

To the Sheriff of said County, GREETING:



Whereas, Andrew Jackson has executed and filed the required bond, with sureties, in the sum of one thousand dollars, conditioned that if he, the said Andrew Jackson, shall fail to maintain his title to the goods and chattels hereafter recited, he shall pay to the party entitled thereto the value thereof, together with legal costs, fees and damages which the defendant or other person to whom such goods and chattels belong may sustain by reason of this writ.

Now we command you, that to the said Andrew Jackson you deliver the following goods and chattels:

(Here the goods are itemized)

of the value of five hundred dollars, which to be replevied and delivered you cause, and that you summon and put by safe pledges the

said John C. Calhoun, or any other person in whose possession the goods and chattels may be found, so that he be and appear before our judges at Wilkes-Barre, at our County Court of Common Pleas, there to be held for the County of Luzerne, on the first Monday of June next, to answer the said Andrew Jackson of a plea wherefore he took the goods and chattels aforesaid, and the same unjustly detains against sureties and pledges, etc. And have then and there this writ.

Witness the Honorable Isaac G. Gordon, Esq., President Judge of our said Court, at Wilkes-Barre, the 15th day of May, A. D. 1906.

ROGER B. TANEY,  
*Prothonotary.*

By giving a claim property bond the defendant can, by virtue thereof, retain possession of the goods and chattels mentioned in this writ until final judgment is entered in the action. Following is the form of such a bond:

ANDREW JACKSON	}	In the Court of Common Pleas
<i>vs.</i>		of the County of Luzerne, of
		October Term, A. D. 1901.
JOHN C. CALHOUN.	}	No. 465.

KNOW ALL MEN BY THESE PRESENTS, That we, John C. Calhoun and Robert E. Lee, of the City of Wilkes-Barre, in said county, are held and firmly bound unto the Commonwealth of Pennsylvania for the use of the parties interested, in the sum of one thousand dollars, lawful money of the United States, to be paid unto the Commonwealth of Pennsylvania for the use of the parties interested, their certain attorney, executors, administrators or assigns; to which payment well and truly to be made and done, we do bind ourselves and each of us, our and each of our heirs, executors and administrators, and every of them, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 21st day of September, A. D. 1901.

Whereas, a certain Andrew Jackson has obtained a certain writ of replevin, issued out of the Court of Common Pleas of said county, tested at Wilkes-Barre, Pa., the 19th day of September, A. D. 1901, against the above bounden John C. Calhoun, of the county afore-said, commanding the said sheriff that he should replevy and cause to be delivered unto the said Andrew Jackson one horse of the value of five hundred dollars.

And, whereas, the said John C. Calhoun hath claimed property in the said goods and chattels.

Now the condition of this obligation is such, that if the above bounden John C. Calhoun shall fail to maintain his title to such goods or chattels, he shall pay to the party thereunto entitled the value of said goods and chattels, and all legal costs, fees and damages which the defendant or other persons to whom such goods or chattels so replevied belong, may sustain by reason of the issuance of such writ of replevin, then this bond to remain in full force and virtue, otherwise to be void and none effect.

Signed, sealed and delivered	}	JOHN C. CALHOUN	(Seal).
in the presence of		ROBERT E. LEE	(Seal).
T. J. JACKSON.		JEFFERSON DAVIS	(Seal).

No. —

Term, 190

*versus*

DEFENDANT'S BOND IN REPLEVIN.

*Defendant's Attorney.*

**Writ of Dower.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA.

To the Sheriff of said County, GREETING:



Command Edward Sturges that justly and without delay he render to Olive Nichols, widow, who was the wife of John Nichols, now deceased, the reasonable dower which falleth to her of the freehold which was of the said John Nichols, her late husband, in the City of Wilkes-Barre, said county, whereof she has nothing, as she says, and whereof she complains that the said Edward Sturges deforces her. And unless he shall do so, and if the said Olive Nichols shall give you security for prosecuting her claim with effect, then summon by good summoners the aforesaid Edward Sturges that he be and appear before our judges at Wilkes-Barre, at our County Court of Common Pleas, there to be held the first Monday of June next, to show wherefore he will not. And have you then and there the names of those summoners and this writ.

Witness the Honorable Garrick M. Harding, President Judge of said Court, at Wilkes-Barre, this 1st day of May, in the year of our Lord one thousand nine hundred and seven.

M. J. PHILBIN,  
*Prothonotary.*

**Summons in Partition.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA.

To the Sheriff of said County, GREETING:



If John Smith, make you secure of prosecuting his claim, then we command you, that, by good and lawful summoners you summon Thomas Smith, Peter Smith and Mary Jane Smith, late of your county, so that they be and appear before our judge, at Wilkes-Barre, at our County Court of Common Pleas, there to be held the first Monday of June next, to show wherefore, whereas the said John Smith, plaintiff, and

Thomas Smith, Peter Smith and Mary Jane Smith, defendants, hold together and undivided a certain tract of land, situate in the Second Ward of the City of Wilkes-Barre, Luzerne County, Pennsylvania, bounded and described as follows, to wit: Beginning at a point on the west side of Pearl Street, one hundred feet from the southwesterly corner of Scott and Pearl Streets; thence in a westerly direction and in a line parallel with said Scott Street, to the line of the Beaumont lands; thence along said line in a southwesterly direction seventeen and three-tenths feet to a point; thence in a line towards Pearl Street, so extended that it strikes Pearl Street ninety-seven feet from the southwest corner of Pearl and Scott Streets aforesaid, and thence along Pearl Street three feet to the place of beginning. Being part of lot No. 1, on map or plan made by Seynore Butler, Esq., and recorded in the office for recording deeds, etc., in and for the County of Luzerne, in Deed Book No. 139, pages 59, etc., the same the said Thomas Smith, Peter Smith and Mary Jane Smith partition thereof between them to be made (according to the laws and customs of this Commonwealth in such case made and provided) do gainsay and the same to be done do not permit very unjustly and against the same laws and customs. And have you then and there this writ and the names of these summoners.

Witness the Hon. Stanley Woodward, President Judge of said Court, at Wilkes-Barre, this first day of May, in the year of our Lord one thousand nine hundred and seven.

PETER SEIBEL,  
*Prothonotary.*

**Summons in Ejectment.**

LUZERNE COUNTY, SS. :

THE COMMONWEALTH OF PENNSYLVANIA.

To the Sheriff of said County, GREETING :



You are hereby commanded that you summon Pierce Butler to appear before the Judges of the Court of Common Pleas, in and for said county, to be holden at Wilkes-Barre, on the first day of June next, then and there to answer to a certain complaint made by James Wilson, that the said Pierce Butler now has in his actual possession a tract of land situate in the City of Pittston, Luzerne County, Pennsylvania, bounded and described as follows, to wit: (This is followed with a full description of the land for the recovery of which this action was brought.) The right of possession or title to which the said plaintiff says is in him and not in the said defendant. All of which the said plaintiff avers he is prepared to prove before said court. Hereof fail not.

Witness the Honorable Edmund L. Dana, President Judge of our said Court, at Wilkes-Barre, the first day of June, A. D. one thousand nine hundred and seven.

GEORGE WASHINGTON,  
*Prothonotary.*

The indorsement on the summons in the action of assumpsit, and on the summons in the action of trespass should be as follows:

No. ———

Term 190

JOHN W. JONES

vs.

PATRICK F. CONROY.

SUMMONS.

SHERIFF'S COSTS.

Docket Entry ----- \$-----

Travel -----

Service -----

Copies -----

-----

Total -----

Paid by -----

----- Sheriff.

D. A. FELL, Attorney.

Indorsement on the summons in the action of replevin should be as follows :

No. —

Term 190

DAVID JOHNSON

VS.

ARNOLD JENKINS.

WRIT OF REPLEVIN.

THOMAS SMITH,  
*Plaintiff's Attorney.*

Indorsement on writ of dower should be as follows:

No. —

Term 1906.

MARTHA NICHOLSON

VS.

JACOB HEMINGWAY.

WRIT OF DOWER.

GEO. S. HORN,

*Attorney.*

Indorsement on summons in partition should be as follows:

No. —

Term 190

CHARLES VANDER VORT

VS.

FRANK ARGUST, MATILDA PERRY,  
THOMAS ARGUST and GEO.  
ARGUST.

SUMMONS IN PARTITION.

JOHN H. DANDO,  
*Attorney.*

Indorsement of summons in ejectment:

No. ———

Term 190

H. P. BLACKMAN

VS.

PETER WHITE.

SUMMONS IN EJECTMENT.

SHERIFF'S COSTS.

Docket Entry ----- \$-----

Travel -----

Service -----

Copies -----

\$-----

Paid by -----

----- Sheriff.

P. H. CAMPBELL,  
*Attorney.*

All these writs the sheriff is required to serve upon the defendants. The methods of service are provided by statute, and consist of a great variety. On each writ it is his duty to make a return of service, indicating therein the method he used. As an example, hereunder is furnished a return of service of a summons in an action of assumpsit upon the defendant personally.

*To the Honorable Judges Within Named:*

I hereby certify and return that I served this writ personally on defendant, Benedict Arnold, on the 15th day of May, 1906, by handing him a true and attested copy thereof.

So answers,

JONATHAN R. DAVIS,  
*Sheriff.*

SHERIFF.

The sheriff is, like the prothonotary, a county officer, elected by the people. His duties principally are: To preserve the public peace within his county, arrest malefactors, summon jurors, levy executions, hold judicial sales, serve writs and other processes, and perform various other ministerial duties in aid of the courts of record.

#### DOCKETS IN OFFICE OF SHERIFF.

**Summons Docket.** Contains record of all writs requiring the persons against whom they are issued to appear in court, and make answer to complaints, on the part of persons at whose instance the writs are issued by the prothonotary. This record consists of the names of the parties to the action, and number and term of each case.

**Execution Docket.** The record in this book is the same as in that of the same name kept in the prothonotary's office.

**Sheriff's Sales Docket.** In this book are records of all sales of real estate made by the sheriff pursuant to any execution process. It consists of the names of the parties, plaintiff and defendant, description of the property, when sales were had, and the prices paid by the purchasers at said sales.

**Jurors' Docket.** In this are entered the names, residences and occupations of all persons chosen to act as jurors in any of the courts in which jury trials are had.

## DECLARATIONS OR STATEMENTS.

After entry of praecipe the next step required of the plaintiff to complete a presentation to the court of the complaint in his action, is the filing of a declaration or statement in the prothonotary's office.

This paper is a formal and methodical specification of the facts and circumstances constituting the plaintiff's cause of action. In an action of assumpsit the declaration must be accompanied by copies of all notes, contracts, book entries, or a particular reference to the records of any court within the county in which the action is brought, upon which the plaintiff's claim is founded. Following are examples of statements used in the different forms of action.

**Declarations in Assumpsit.**

GEORGE DAVIDSON	}	In the Court of Common Pleas
vs.		of Lancaster County.
HENRY KING.		No. 25, May Term, 1903.

The plaintiff, George Davidson, claims of the defendant, Henry King, the sum of five hundred dollars, with interest thereon from the first day of January, 1902, which is justly due and payable to the plaintiff by the defendant upon the cause of action whereof the following is a statement.

The defendant, on the first day of November, 1901, at the county aforesaid, made his promissory note, whereof the following is a copy :

\$500.00. Philadelphia, Pa., Nov. 1, 1901.

Two months-----after date I promise to pay to the  
order of ----- William Burns, -----  
five hundred -----dollars.

At First National Bank. Without defalcation for value received.

(Signed) HENRY KING.

And having delivered said promissory note to the plaintiff, the defendant became liable for the payment of the same, according to the tenor and effect thereof.

The said promissory note was duly presented for payment at the said First National Bank, and payment of the same duly demanded of said bank according to the tenor of said note ; but payment thereof was refused, and the defendant has always refused to pay the amount of said note, or any part thereof.

FRANK C. STURGES,  
*Attorney for Plaintiff.*

This declaration, and all others following, should be indorsed and folded same as first form of praecipe.

FRANK SMITH	}	In the Court of Common Pleas
<i>vs.</i>		of Philadelphia County.
GEORGE WELLES		No. 9, April Term, 1903.

The plaintiff, Frank Smith, claims of the defendant, George Welles, the sum of one thousand dollars, with interest thereon from the first day of June, 1901, which is justly due and payable to the plaintiff by the defendant upon the cause of action whereof the following is a statement.

George Welles, the defendant, to wit, on the first day of April, 1901, at the county aforesaid, made and delivered to Edmund Foster his promissory note, whereof the following is a copy :

\$1,000.00.

Philadelphia, Pa., April 1, 1901.

Two months after date-----I promise to pay  
to the order of-----Edmund Foster, one  
thousand-----dollars, without defalcation-----  
for value received.

GEORGE WELLES.

And the said Edmund Foster, after the making of the said note, and before payment of the said sum of money therein specified, to wit, on the first day of May, 1901, at the county aforesaid, indorsed and delivered said note to the plaintiff.

When the said note became due, to wit, on the first day of June, 1901, the said note was duly presented for payment to the said George Welles, and payment of the sum of money specified in the said note was then and there duly requested; but neither the said George Welles, nor any person or persons on his behalf, did or would then, or at any time before or afterwards, pay the said sum of money, or any part thereof, but wholly neglected and refused so to do, all of which several premises the defendant, to wit, on the day and year last aforesaid, at the county aforesaid, had due notice, by means whereof the defendant then and there became liable to pay to the plaintiff the said sum of money, but the defendant has failed to pay said sum or any part thereof.

J. HOWARD GENDELL,  
*Attorney for Plaintiff.*

HORATIO MILLS	}	In the Court of Common Pleas
vs.		of Allegheny County.
N. A. INSURANCE CO.	}	No. 5, June Term, 1903.

The plaintiff, Horatio Mills, claims of the defendant, the North American Insurance Co., the sum of five thousand dollars, with interest thereon from the 10th day of September, 1902, which is justly due and payable to the plaintiff by the defendant, upon cause of action whereof the following is a statement.

The plaintiff, to wit, on the first day of March, 1902, executed and delivered to the plaintiff a policy of insurance in consideration of the sum of fifty dollars, paid by the plaintiff to the defendant on the first day of March, 1902, at Pittsburg, in the county aforesaid, the receipt whereof was in said policy of insurance, of which the following is a copy: (Here insert copy of policy, with all conditions, etc.)

The plaintiff avers that he has performed all things on his part to be performed, but the defendant on its part has broken its covenants to be performed, in this: That on the 10th day of September, 1902, at the City of Pittsburg, the premises in said policy of insurance mentioned were destroyed by fire, which did not happen by any causes to which the insurance undertaken by the said defendant did not apply, and that on the 10th day of September, 1902, the plaintiff

gave notice to the defendant of the fire and loss, and on the 20th day of the same month, in the said City of Pittsburg, did deliver to the defendant a particular account of the loss and damage, and also of the value of the premises insured, and when and how the fire originated, to the best of his knowledge, to which said account and notice was annexed a certificate, under the hand and seal of a notary public, stating that he was acquainted with the character and circumstances of the insurance, and that, without fraud, he had sustained a loss or damage upon the premises insured, to the sum of five thousand dollars, yet the defendant has not paid to the plaintiff the said sum of money, nor repaid nor reimbursed him for the loss sustained by the fire, nor any part thereof, although so requested, contrary to the form and effect of the said policy of insurance.

D. L. & J. Q. CREVELING,  
*Attorneys for Plaintiff.*

Feb. 19, 1903.

### Declarations in Actions of Trespass.

EDWARD LOFTUS	}	In the Court of Common Pleas
vs.		of Allegheny County.
JOHN E. PERKINS.		No. 68, October Term, 1903.

The plaintiff, Edward Loftus, claims of the defendant, John E. Perkins, the sum of five thousand dollars, which is justly due and payable to the plaintiff by the defendant upon the cause of action, whereof the following is a statement.

The defendant at the time hereinafter mentioned, was possessed of a certain property, with its appurtenances, situated in the Tenth Ward of the City of Pittsburg, on a certain street called Main Street, which is a public highway, and on the 19th day of October, 1902, the defendant wrongfully placed large quantities of materials, dirt and rubbish in the said street near to his property, and wrongfully and unjustly continued the same therein during the night time of the day aforesaid, without fixing or placing any light or signal near such dirt or rubbish to denote its position; in consequence of which said neglect and improper conduct of the defendant, a carriage of the plaintiff, with the plaintiff therein, was, on the night of the day

aforesaid, while passing along said highway, accidentally driven upon and against said dirt and rubbish, and was thereby overturned, by means whereof the plaintiff became greatly injured, bruised, cut and sick, to the damage of said plaintiff in the sum of five thousand dollars.

R. W. HALL,  
*Attorney for Plaintiff.*  
 Feb. 19, 1903.

ROBERT P. ROBINSON	}	In the Court of Common Pleas
vs.		of Clearfield County.
THOMAS R. PETERS.		No. 101, March Term, 1903.

The plaintiff, Robert P. Robinson, claims of the defendant, Thomas R. Peters, the sum of three thousand dollars, which is justly due and payable to the plaintiff by the defendant upon the cause of action, whereof the following is a statement.

The defendant, to wit, on the 5th day of August, 1902, to wit, at the county aforesaid, wrongfully kept a certain dog. The defendant then knew that the said dog was ferocious and mischievous, and used and accustomed to attack and bite mankind. And the said dog, so kept by the defendant, as aforesaid, then and there attacked and bit the plaintiff and greatly lacerated, hurt and wounded one of the legs of the plaintiff; and thereby the plaintiff then and there became sick, sore, lame and disordered, and so remained and continued for. to wit, one year then next following, during all which time he suffered and underwent great pain, and was thereby then and there hindered and prevented from transacting his affairs and business by him, during that time to be transacted; and also by means of the premises, the plaintiff was thereby then and there put to great expense, costs and charges, in the whole amounting to the sum of, to wit, one thousand dollars, in and about endeavoring to be cured of the said wounds, sickness, soreness and lameness, so occasioned as aforesaid, and has been and is by means of the premises, otherwise greatly injured, to wit, at the county aforesaid, to the damage of the plaintiff in the sum of three thousand dollars.

W. C. ARNOLD,  
*Attorney for Plaintiff.*  
 Feb. 19, 1903.

C. D. REITER	}	In the Court of Common Pleas
vs.		of Luzerne County.
LEHIGH VALLEY R. R. Co.		No. 105, December Term, 1903.

The plaintiff, C. D. Reiter, claims of the defendant, the Lehigh Valley Railroad Company, the sum of four thousand dollars, which is justly due and payable to the plaintiff by the defendant upon the cause of action, whereof the following is a statement.

The defendant is a corporation engaged in the business of carrying passengers for hire. On the 25th day of December, 1902, the plaintiff, having paid his fare, became a passenger upon a certain passenger railway car of the defendants, running upon the section of the line operated by defendant, to wit, between the City of Wilkes-Barre and the City of Pittston, both in the county aforesaid, said car being the property of and operated by the defendant.

And whereupon the defendant undertook to safely carry the plaintiff for hire.

Nevertheless, the said defendant in this respect, wholly disregarding and neglecting their duty, so carelessly and negligently operated said car, that when the same was crossing Market Street, in the City of Wilkes-Barre, the said car upon which the plaintiff was a passenger, by reason of defendant's negligence, collided with a certain other car.

By reason of said collision, due to neglect and carelessness of defendant, and total disregard of its duty to safely carry the plaintiff for hire as aforesaid, the said plaintiff has been injured in his spine and nerves, and has suffered great pain, and has been prevented from attending to and transacting his lawful business and affairs, to wit, from thence hitherto, and has been compelled to lay out and expend large sums of money for medicines and medical attendance, and has been otherwise greatly injured, to the plaintiff's damage in the sum of four thousand dollars.

JAMES L. LENAHAN,

*Attorney for Plaintiff.*

Feb. 19, 1903.

**Declaration in Replevin.**

DAVID JOHNSON	}	In the Court of Common Pleas
vs.		of Adams County.
ARNOLD JENKINS.		No. 51, October Term, 1902.

The plaintiff complains that the defendant did, on the 7th day of May, 1902, at Gettysburg, in the county aforesaid, unlawfully take and carry away one horse and two wagons of the value of one thousand dollars, and the same unlawfully detained against sureties, pledges, etc.; which said horse and wagons were then and there the property of the plaintiff, he having, on the second day of January, 1902, acquired the ownership thereof by purchase from Eli Fisher, of said Gettysburg, who then and there delivered possession of the said horse and wagons to him, the said plaintiff; wherefore the said plaintiff saith that he has suffered injury and hath sustained damage in the sum of one thousand dollars, and, therefore, he brings this suit, etc.

THOMAS SMITH,  
*Attorney for Plaintiff.*

ADAMS COUNTY, SS.:

David Johnson, the above named plaintiff, being duly sworn, says that the facts set forth in the foregoing statement or declaration are true.

Sworn and subscribed before me 2nd October, 1902.	}	DAVID JOHNSON.
FRANK BOBOLINK, <i>Prothonotary.</i>		

**Declaration in Dower.**

MARTHA NICHOLSON	}	In the Court of Common Pleas
vs.		of Lackawanna County.
JACOB HEMINGWAY.		No. 11, March Term, 1903.

Martha Nicholson, the plaintiff above named, and who was the wife of James Nicholson, deceased, by her attorney, George S. Horn, demands against Jacob Hemingway the third part of all that certain

messuage and lot of land, with the improvements thereon, situated in the City of Scranton, in the county aforesaid, bounded and described as follows, to wit: (Here give full description of the property), with the appurtenances, as the dower of the said Martha Nicholson, of the endowment of the said James Nicholson, deceased, heretofore her husband, whereof she has nothing, etc.

GEORGE S. HORN,

*Attorney for Plaintiff.*

Feb. 23, 1903.

### Declaration in Partition.

CHAS. VANDER VORT

v's.

FRANK ARGUST,  
MATILDA PERRY,  
THOS. ARGUST,  
GEORGE ARGUST.

In the Court of Common Pleas  
of Luzerne County.

No. 15, March Term, 1903.

Frank Argust, Matilda Perry, Thomas Argust and George Argust were summoned to answer Charles Vander Vort of a plea wherefore whereas the plaintiff and the said defendants, together and undivided, do hold the following-described land, with the appurtenances, situated in the Borough of Nanticoke, Luzerne County, Pennsylvania, bounded and described as follows: (Here give full description of the property), they, the said defendants, partition thereof, between them, according to the laws and customs of this Commonwealth, and the statutes in such cases made and provided, deny, and unjustly permit not the same to be done, contrary to the laws and customs and statutes aforesaid. And thereupon, the said plaintiff, by his attorney, John H. Dando, says that whereas the said plaintiff and the said defendants, together and undivided, do hold the tenements aforesaid, with the appurtenances, whereof one equal part out of five equal parts, the whole into five equal parts to be divided, to him, the said plaintiff, Charles Vander Vort, and his heirs, it pertaineth to have; and the said other equal part, to wit, the whole of the said remaining part of the five equal parts to the said defendants, Frank Argust, Matilda Perry, Thos. Argust and George Argust, them and their heirs, it pertaineth to have; that is to say, of the whole of said remaining last mentioned

part, one equal fourth part thereof, into four equal parts to be divided to the said Frank Argust and his heirs, it pertaineth to have; and one other equal fourth part thereof into four equal parts to be divided, to the said Matilda Perry and her heirs, it pertaineth to have; and one other equal fourth part of the same into four equal parts, to be divided to the said Thomas Argust and his heirs, it pertaineth to have; and one other equal fourth part of the same into four equal parts divided, to the said George Argust and his heirs, it pertaineth to have; to hold to them the said several parties, respectively, as aforesaid, in severalty, so that they, the said defendants and the said plaintiff, of the respective parts or pur-parts to them belonging and pertaining, of the lands and tenements and premises aforesaid, with the appurtenances, may severally apportion themselves, they the said defendants deny that partition be made between them according to the laws and customs of this Commonwealth, and the statutes in such case made and provided and unjustly permit not the same to be done contrary to the laws and customs and the statutes aforesaid. Whereupon the said plaintiff says that he is injured and has been damaged to the value of one thousand dollars, and, therefore, he brings this suit.

JOHN H. DANDO,  
*Attorney for Plaintiff.*  
 Feb. 23, 1903.

### Declaration in Ejectment.

H. P. BLACKMAN

*vs.*

PETER WHITE.

In the Court of Common Pleas  
 of Luzerne County.

No. 467, April Term, 1905.

The plaintiff in this action complains that Peter White, the above named defendant, now has in his actual possession a lot of ground, situate in the Township of Hanover, Luzerne County, Pennsylvania, bounded and described as follows, to wit: Beginning at a corner of Keith Street, in line of lot owned by Jacob Hardware, thence south 43 degrees and 23 minutes west 103 feet to a corner of an alley 10 feet wide; thence along said alley 100 feet to a corner on an alley 10 feet wide; thence north 43 degrees and 23 minutes east 100 feet to a corner on Division Street, and thence along Division Street about 103 feet to the place of beginning; the title and right of pos-

session to which he, the said H. P. Blackman, says is in him, and not in the said Peter White; all of which he, the said H. P. Blackman, avers he is prepared to prove, and hereunder presents an abstract of title under which he claims the said lot of ground and the right to the possession thereof.

P. H. CAMPBELL,  
*Attorney for Plaintiff.*

# ABSTRACT OF PLAINTIFF'S TITLE.

COMMONWEALTH OF PENN'A	}	Patent dated 23d May, 1814.
to		Consideration paid-----\$80.00.
		Recorded 27th day of May, 1814.
BENJ. F. BUTLER.		Deed Book 15, page 29.

BENJ. F. BUTLER	}	Deed dated 29th June, 1845.
to		Consideration paid-----\$500.00.
		Recorded the 29th June, 1845.
GEORGE B. MCCLELLAN.		Deed Book 48, page 73.

WM. PENN KIRKENDALL,	}	Deed dated 9th July, 1852.
<i>Sheriff,</i>		Acknowledged 12th July, 1852.
to		Consideration -----\$700.00.
WINFIELD SCOTT.		Recorded in Shffs. D. B., No. 7, page 5.

Land sold by the sheriff pursuant to writ of Fieri Facias, No. 25, June Term, 1852; tested at Wilkes-Barre, Pa., the 17th May, 1852, and issued upon judgment, Winfield Scott vs. George B. McClellan, No. 11, October Term, 1850.

WINFIELD SCOTT	}	Deed dated 25th November, 1860.
to		Consideration paid-----\$950.00.
		Recorded 9th December, 1860.
H. P. BLACKMAN.		Deed Book 64, page 325.

## APPEARANCE AND AFFIDAVIT OF DEFENCE.

In the foregoing cases the plaintiffs have furnished all the information required to make it necessary for the defendants to answer their complaints. To avoid losing the privilege of resisting the demand of the plaintiff, the defendant must, first, enter an appearance. This is an act by which the defendant manifests his submission to the jurisdiction of the court, and is generally performed by causing either his own name or the name of his attorney to be written in the margin of the page of a docket in the prothonotary's office, on which a record of the case against him is entered. In an action of assumpsit, in which the plaintiff has furnished a copy of his claim, the defendant must also file an *affidavit of defence*. This document is a written statement opposed, either in fact or law, or in both, to the plaintiff's demand. The form of this affidavit is as follows:

EDMUND FOSTER	}	In the Court of Common Pleas
vs.		of Philadelphia County.
CHAS. HOLCOMB.		No. 9, April Term, 1903.

Before me, L. A. Dymond, a notary public for the Commonwealth of Pennsylvania, residing at the City of Philadelphia, personally appeared Chas. Holcomb, the defendant above named, who being duly sworn, doth say that he hath a just and legal defence to the whole of the plaintiff's demand, the nature and character of which are as follows:

The promissory note, of which a copy is furnished in the plaintiff's statement in this case, was given by the deponent to the payee thereof under circumstances and conditions as follows, viz: On the day of the date of said note, at said City of Philadelphia, Edmund Foster, the payee aforesaid, agreed to sell and deliver to the deponent, at his place of business, in the said city, on or before the first day of May, 1901, 2,000 bushels of potatoes for the sum of one

thousand dollars. Thereupon, and at the request of the said Edmund Foster, the deponent gave him the said note, subject to these conditions, to wit: That he, the said Edmund Foster, should not have the right to negotiate or otherwise transfer said note until the delivery of the said potatoes, and that if the same were not delivered on the first day of May, 1901, the said note should be immediately returned to the deponent. To all of which said conditions, he, the said Edmund Foster, then and there agreed and assented, and of the existence of which said conditions, and of their purport and meaning, the plaintiff then and there acquired full knowledge, he being present at the transaction and taking part therein as the friend of the said Edmund Foster. That the said potatoes were not delivered on the said first day of May, 1901, and the day following the deponent demanded of the said Edmund Foster that said note be returned to him in accordance with the conditions aforesaid, and at the same time notified the said Edmund Foster that because of his failure to deliver the said potatoes at the time appointed, he was absolutely released from his agreement to buy the same, and that he would not allow nor accept delivery of the said potatoes at any time in the future, and that he has not since allowed nor accepted the delivery of the same. That he, the deponent, believes and expects to be able to prove the foregoing allegations of fact on the trial of the case.

Sworn and subscribed before me	}	CHAS. HOLCOMB.
this            day of March, 1903.		

L. A. DYMOND, *Notary Public*.  
My commission expires January 2, 1903.

## PLEAS.

Before the trial of any action can occur the defendant must enter a plea.

**A Plea.** Is a mode of presenting the defendant's answer to the complaint of the plaintiff. There are two classes of pleas, viz, *dilatory* and *peremptory*.

**Dilatory Pleas.** Are pleas in *abatement* and to the *jurisdiction of the court*. The former avers, merely, some informality in the proceedings of the action, and may, in almost every instance, be avoided by amendments. The latter plea denies the jurisdiction of the court in which the action is pending.

**Peremptory Pleas.** Are called pleas in bar, and in such a plea is set forth an answer, which, if found true, defeats the plaintiff's action.

Pleas are still further distinguished as general and special.

**General Pleas.** Are pleas of the general issue and in which the defendant simply denies the allegations in the plaintiff's declaration.

**Special Pleas.** Are pleas in which the facts upon which the defendant relies to establish his defense are particularly stated.

Pennsylvania has abolished special pleading in the action of assumpsit, trespass and ejectment, and prescribed the plea to be used therein, the same being as follows:

Pleas in Actions of Assumpsit, Non Assumpsit, Payment, Set-off and the Bar of the Statute of Limitations.

**Plea in Action of Trespass and Ejectment** is "not guilty."

**Non Assumpsit.** In using this plea the defendant avers that he did not undertake or promise as alleged in the plaintiff's declaration.

**Payment.** Is an allegation that the claim of the plaintiff has been fully paid.

**Set-Off.** In this plea the defendant asserts that the plaintiff is indebted to him, and that this indebtedness he is entitled to have treated as full or partial payment of the plaintiff's claim.

**Bar of the Statute of Limitations.** The plaintiff has lost the right to maintain his action because of failure to bring it before the expiration of the time within which the statute provides the action must be commenced. The statute referred to requires that nearly all personal actions be commenced within six years after the cause of action arises.

**Not Guilty.** In trespass means either that the defendant did not commit the tort of which he is accused, or that the plaintiff is not vested with such ownership or possession of the property injured as the law requires of him, or that if he did commit the tort, the same was not the immediate cause of the injury for which the plaintiff claims damages. In an action of ejectment it means either that the defendant is not in possession of the land described in the plaintiff's declaration, or that his right to the possession is superior to that of the plaintiff, or that the plaintiff does not own the land and is not, in any other manner, vested with right of possession to the same.

**Object of Pleas.** Is to produce an issue. An issue arises when a fact or conclusion of law is maintained by one party to the action and denied by the other.

An action cannot be submitted for trial until an issue is therein thus ascertained. The forms used for pleas are as follows:

## FORMS OF PLEAS IN BAR.

**In Actions of Assumpsit.**

EDMUND FOSTER	}	In the Court of Common Pleas
vs.		of Philadelphia County.
CHAS. HOLCOMB.		No. 9, April Term, 1903.

Now, March 15, 1903, the defendant, through his attorney, H. B. Hamlin, pleads non assumpsit.

H. B. HAMLIN,  
*Attorney for Defendant.*

The same form is applicable to all actions of assumpsit. Of course, the plea must be different if the defendant does not deny the promise alleged in the plaintiff's declaration. The "different" pleas are hereinbefore named and defined. Then, too, all of these pleas may be entered in one action. If all are used the defendant may present, at the trial of the case, testimony in support of each and of all.

**In Actions of Trespass.**

ROBT. P. ROBINSON	}	In the Court of Common Pleas
vs.		of Clearfield County.
THOMAS R. PETERS.		No. 101, March Term, 1903.

Now, February 1, 1903, the defendant, through his attorney, D. E. Baxter, pleads not guilty.

D. E. BAXTER,  
*Attorney for Defendant.*

NOTE.—The same plea, in the same form, is used in actions of ejectment.

**In Actions of Replevin.**

DAVID JOHNSON	}	In the Court of Common Pleas of Armstrong County.
vs.		
ARNOLD JENKINS.	}	No. 51, October Term, 1903.

Now, January 7, 1903, the defendant, through his attorney, Horace Hands, pleads non cepit modo et forma.

HORACE HANDS,  
*Attorney for Defendant.*

NOTE.—In English, “non cepit modo et forma” reads: He did not take in manner and form. The other pleas in bar, available to the defendant in this action, are, *actio non accrevit infra sex annos*, or in English, “The action has not accrued within six years;” *cepit in alio loco*, or “He took in another place,” and “property,” which means that the title and right of possession to the goods or chattels in controversy, are either in the defendant or a stranger to the action.

**In Actions of Dower.**

MARTHA NICHOLSON	}	In the Court of Common Pleas of Lackawanna County.
vs.		
JACOB HEMINGWAY.	}	No. 11, March Term, 1903.

Now, January 24, 1903, the defendant, through his attorney, M. J. Wilson, pleads *ne unques seise que dower*.

M. J. WILSON,  
*Attorney for Defendant.*

NOTE.—Translation of “*ne unques seise que dower*,” is, “never seised of dower.” Some of the other pleas allowable in this action are, “*ne unques accouple en loyal matrimonie*,” or the plaintiff and her alleged husband were never joined in lawful wedlock; “*tout temps prist*,” or the defendant always has been and is now ready to render dower.

**In Actions of Partition.**

CHAS. VANDER VORT

vs.

FRANK ARGUST,  
MATILDA PERRY,  
THOMAS ARGUST,  
GEORGE ARGUST.In the Court of Common Pleas  
of Luzerne County.

No. 15, March Term, 1903.

Now, February 24, 1903, the defendants, through their attorney,  
E. A. Lynch, plead non tenent in-simul.

E. A. LYNCH,  
*Attorney for Defendants.*

NOTE.—“Non tenent in-simul” in English reads, “They do not jointly occupy.”

## TRIAL.

All of the actions are now ready for trial. But to avail themselves of the right of trial the parties, or their attorneys, must cause the action to be entered upon the trial list of some term or session of the court. A trial list is a list of pleas marked, by the prothonotary, for trial at any one term. These cases are entered on the list in the order of the dates of their commencement. The number of pleas on each list in Luzerne County is sixty, and, probably, this is the rule in most of the counties of the State. The method of ordering a case on the trial list is a praecipe, addressed to the prothonotary, the usual form of which is as follows:

EDMUND FOSTER	}	In the Court of Common Pleas
vs.		of Philadelphia County.
CHAS. HOLCOMB.		No. 9, April Term, 1903.

Enter the above entitled case on the trial list for May Term, 1903.

J. HOWARD GENDEL,  
*Attorney for Plaintiff.*  
 April 15, 1903.

*To James Monroe, Esq., Prothonotary:*

If cases begun earlier ordered on the list, do not equal the number to which the list is restricted, the action in this praecipe is entered thereon. The judge presiding during the term mentioned in the list calls the cases for trial in the order in which the prothonotary has entered them. When the case is called the plaintiff and his attorney seat themselves at one table, and the defendant and his attorney at another table in the trial room of the court house. Then a

jury of twelve persons, taken from the whole number of jurors summoned to serve at the term of court in which the case is being tried, is selected.

The method of choosing the jury is as follows:

All the names of the jurors summoned are written by the prothonotary, or his clerk, on distinct slips or pieces of paper, as nearly alike in size and appearance as possible, and then these slips are separately folded as nearly in the same manner as possible. These slips, thus prepared, are put into a box provided for that purpose. After having well mixed the slips twenty of them, one after another, are drawn from the box. The names on these slips are written in the order in which they were taken from the box on a sheet of paper, from which the plaintiff and defendant each alternately strike four names. The remaining twelve jurors try the case.

To the jury thus selected, before the beginning of the trial, the following oath or affirmation is administered:

*Oath.*

You, and each of you, do swear that you will well and truly try the issue joined between Edmund Foster, plaintiff, and Charles Holcomb, defendant, and a true verdict render, according to the evidence, unless dismissed by the court, or the cause be withdrawn by the parties. So you shall answer to God at the last great day.

*Affirmation.*

You do solemnly, sincerely and truly declare and affirm that you will well and truly try the issue joined between Edmund Foster, plaintiff, and Charles Holcomb, defendant, and a true verdict give according to the evidence, unless dismissed by the court, or the cause be withdrawn by the parties, and so you affirm.

OPENING OF THE TRIAL.

Immediately after the administration of this oath the plaintiff's attorney opens the case of his client. In doing this the attorney introduces his address by saying: "May it please your Honor and Gentlemen of the Jury." He then presents a brief explanation of his client's cause of action by outlining the nature of the transaction on which it is founded, the questions involved and the character, etc..

of the evidence to be adduced on the part of the plaintiff. The attorney for the defendant, after the plaintiff completes the submission of his testimony, in like manner opens for his client. In this opening the grounds of the defendant's resistance of the plaintiff's demand, and the evidence to be presented in support of the same, are explained.

### EVIDENCE.

Upon the conclusion of the opening of the plaintiff, through his attorney, he begins the introduction of his evidence. The oral evidence is furnished by witnesses, who have been summoned in a writ of subpoena to be present. The form of the writ is as follows:

PHILADELPHIA COUNTY, SS.:

The Commonwealth of Pennsylvania to George Wells, greeting: We command you, that setting aside all manner of business and excuses whatsoever, you be and appear in your proper person before our judges at the City of Philadelphia, at our Court of Common Pleas for the County of Philadelphia, and to be held on the 15th day of May, A. D. 1903, at ten o'clock in the forenoon of that day, to testify all in singular those things which you shall know in a certain action now depending and undetermined, between Edmund Foster, plaintiff, and Charles Holcomb, defendant, on the part of the plaintiff; and this you are not to omit under the penalty of one hundred pounds. Witness the Honorable Michael Arnold, President Judge of our said court at Philadelphia, the 12th day of May, in the year of our Lord one thousand nine hundred and three.

JAMES MONROE,  
*Prothonotary.*

Before testifying, a witness, with his right hand uplifted, is required to take an oath or affirmation.

### *Oath.*

You do swear that the evidence which you shall give to the court and jury, in the issue joined, wherein Jacob Hendershot is plaintiff, and Eli Sanderson is defendant, shall be the truth, the whole truth and nothing but the truth. So help you God.

*Affirmation.*

You do solemnly, sincerely and truly declare and affirm that the evidence which you shall give to the court and jury, in the issue joined, wherein Jacob Hendershot is plaintiff, and Eli Sanderson is defendant, shall be the truth, the whole truth and nothing but the truth, and so you affirm.

After the witness has taken this oath, his examination in chief is proceeded with by the plaintiff's attorney. At the conclusion of his examination in chief, the witness is cross-examined by the defendant's attorney. The witnesses of the defendant are first examined by the defendant's attorney and cross-examined by the plaintiff's attorney. Re-examination of a witness in chief is called redirect examination, and the cross-examination of a witness, who has undergone re-direct examination, is called re-cross-examination.

Examination "in chief" means examination of the witness by the party calling him, and cross-examination means examination of a witness upon his evidence given in chief by the other party.

## OBJECTION TO EVIDENCE.

The attorneys of the parties are at liberty to object to questions propounded to the witnesses. When objection is made the attorney interposing the same must assign reasons therefor. It is the duty of the judge to either rule in favor of or against the admission of the question involved in the objection before the witness is allowed to resume his testimony. If the judge decides that the question is admissible he says: "Objection overruled," and, if he decides otherwise, he says, "Objection sustained." If the attorney against whom the judge rules requests it, exception to the judge's decision is noted in the record of the trial. For example, if the ruling is against an objection on the part of the defendant, the entry is, "Objection overruled. Exception for defendant noted and bill sealed."

The reasons assignable for objections to testimony proposed in questions to witnesses are the testimony is, 1, irrelevant; 2, hearsay; 3, immaterial; 4, not cross-examination; 5, not the best evidence; 6, incompetent; 7, not rebuttal; 8, not surrebuttal.

**Irrelevant Testimony.** Is testimony not related or applicable to the matter in issue.

**Immaterial Testimony.** Is testimony which, if believed by the jury, should not be considered in deciding any question of fact involved in the issue.

**Hearsay Testimony.** Is testimony of facts communicated to the witness by another person, not a party to the action.

**Not Cross-Examination.** This objection is applicable to questions in the cross-examination of a witness concerning matters of fact to which the attention of the witness was not directed in his examination by the party calling him.

**Incompetent Evidence.** If believed, not sufficient to establish the fact sought to be proved.

**Not Rebuttal.** Not contradictory of any new matter introduced in the evidence submitted by the defendant in opposition to the evidence of the plaintiff in chief.

**Not Surrebuttal.** Not contradictory of any new matter introduced by the plaintiff in rebuttal of the evidence of the defendant.

**Not the Best Testimony.** Is oral testimony of facts which can be proven by written evidence, such as that furnished in deeds, bonds, letters, or any other instruments in writing.

The evidence supplied in written instruments is called documentary evidence. The objections that may be made to subjects of this testimony are that the writing is, 1, irrelevant; 2, immaterial; 3, execution not proved. The reason last named means, it has not been shown that the signature was written by the party bearing the name, or by any other person whom he authorized to write the same.

#### OBJECTIONS TO WITNESSES.

Objections may also be made to witnesses. The ground of this objection to witnesses is incompetency. Persons incompetent are:

1. One who does not believe in the Divine Being, the Avenger of falsehood and perjury among men, and will not consent to invoke, by some binding ceremony, the attestation of that Power to the truth of his testimony.

2. One who has been convicted of the crime of perjury in any court of this Commonwealth.

3. Both husband and wife to testify to confidential communications, unless the right to objection is waived.

4. Both husband and wife to testify against each other, except in proceedings of divorce, unless the right to objection is waived.

5. Counsel to testify to confidential communications made to him by his client, or by him to his client, unless objection thereto is waived.

6. A surviving party to a thing or a contract in action, if the other party connected therewith is dead, or has been adjudged a lunatic, and whose right thereto or therein has passed, either by his own act or by act of the law, to a party on the record who represents his interest in the subject in controversy.

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When the plaintiff finishes the introduction of his evidence his attorney announces, "The plaintiff rests." Thereupon the defendant's case is opened, and thereafter his testimony is presented. At the conclusion of his evidence his attorney announces, "The defendant rests." After the defendant rests the plaintiff may call witnesses to rebutt any of the testimony of the defence not relating to matters constituting part of the plaintiff's case in chief, and concerning which he did not adduce testimony before closing in the first instance.

The action of the plaintiff in examining witnesses after the defendant rests is called his case in rebuttal, and that of the defendant, in examining witnesses after the plaintiff closes his rebuttal testimony, is called the defendant's case in surrebuttal. The testimony of the witnesses of the plaintiff examined after the defendant rests is called testimony in rebuttal, and of the witnesses of the defendant examined after the plaintiff rests a second time is called testimony in surrebuttal.

Generally the attorneys for the parties at the conclusion of the hearing of testimony, request the judge to instruct the jury upon certain points or propositions of law. The points are reduced to writing and numbered. Thus prepared they are presented to the judge and argued by the counsel. In his charge to the jury the

judge reads them, and expresses upon each his ruling. As to those in which he concurs he says: "Affirmed." As to those in which he does not concur he says: "Negatived." Immediately following the argument on points the defendant's attorney addresses the jury. In this address he argues the questions of fact to be determined in the verdict. For this purpose he invites attention to such testimony as best serves the cause of his client. To this address the attorney for the plaintiff replies, and, in like manner, seeks to gain victory for the cause of his client.

The trial is then concluded by the charge of the judge. The charge is the final address made by the judge to the jury trying the case, before they make up their verdict, in which he sums up the case and instructs the jury as to the rules of law which apply to its various issues, and which they must observe, in deciding upon their verdict.

After receiving these instructions the jury retire to the jury room to deliberate upon their verdict. A verdict is a formal and unanimous decision or finding of a jury, empanelled and sworn for the trial of a cause, upon the matters or questions duly submitted to them upon the trial. Before the jury retire they are placed in charge of a tipstaff, who is sworn "to keep them in some private and convenient place until they shall have agreed upon their verdict; and not permit any person to speak to them, nor to speak to them himself without leave of the court, except to ask if they have agreed upon their verdict."

The first step taken by the jury after their retirement is in the election of one of their number foreman. They then proceed to the consideration of the testimony, and, if possible, continue their consideration until they have agreed upon a verdict. If, after an effort, occupying a day or two, it appears to them that they cannot agree, through their foreman, they report to the judge that they are unable to agree. If the judge is satisfied of the truth of this report he discharges the jury, otherwise he sends them back to the jury room to make further effort. If, at the expiration of a reasonable period of time, their second endeavor does not yield an agreement, and they still insist that they cannot agree, they are generally discharged. If the jury do thus fail to render a verdict another trial of the case is necessary to secure a judicial determination of the controversy between the parties.

If the jury do agree upon a verdict they return to the trial room and the foreman, through the clerk, presents the verdict to the judge. After inspecting it the judge returns the verdict to the clerk, and thereupon he announces to the jury their verdict, as it has been recorded by the court. If the case in which the verdict is rendered is an action of assumpsit, and is in favor of the plaintiff, the form in which the announcement is made is as follows: "Gentlemen of the jury, listen to your verdict as the court hath recorded it. You do say that in the case wherein Jacob Albright is plaintiff and Jeremiah Slocum the defendant, you do find in favor of the plaintiff and against the defendant for one thousand dollars. So say you all." If the verdict is in favor of defendant the announcement of the finding is: "You find in favor of defendant no cause of action." In the former event judgment is entered in favor of the plaintiff for the sum therein mentioned, together with all costs, and, in the latter event, judgment is entered in favor of the defendant for costs.

To fully illustrate the proceedings in a trial, and furnish forms with which a law stenographer should be familiar, imaginary notes of the official stenographer of the court are here given in the imaginary case of Frank Smith vs. George Wells.

FRANK SMITH	}	No. 9, April Term, 1903.
vs.		
GEORGE WELLS.		

The above entitled case up for trial Thursday, 21st day of May, 1903, before Hon. Simon P. Befogger, A. L. J., and jury, in Court Room No. 1.

Appearances: For the plaintiff, Dennis O. Coughlin, Esq.; and for defendant, H. B. Hamlin, Esq.

Jury sworn at 3 P. M., and case opened for the plaintiff by Mr. Coughlin.

EDMUND FOSTER *sworn for plaintiff.*

Examined in chief by Mr. Coughlin.

Q. Where do you reside? A. At No. 45 Chestnut Street, in the City of Philadelphia.

Q. How long have you been a resident of that city? A. Fifteen years.

Q. In what business have you been engaged during the last 15 years? A. In business of buying and selling agricultural products to wholesale dealers.

Q. Are you acquainted with the parties to this suit? A. I am.

Q. How long have you known them? A. I have known the plaintiff about ten years, and the defendant nearly five years.

Plaintiff's Counsel. Note bearing date April 1, 1901, drawn to the order of Edmund Foster, payable in two months, for the sum of \$1,000.00 and signed George Wells, shown witness.

Q. Whether or not you are the payee named in that note? A. I am.

Q. Whose name is signed to the note? A. The name of the defendant.

Q. In whose handwriting is this signature of the maker? A. In the handwriting of the defendant.

Q. How do you know it is in his handwriting? A. Because I saw him write it.

Q. Look at the back of the note and state what you find written there, if anything? A. I find my name.

Q. In whose handwriting is this name? A. In my handwriting.

Q. When did you write your name on the back of the note? A. The second day of May, 1901.

Q. Immediately after writing your name there what did you do with the note? A. I delivered it to the plaintiff.

Plaintiff's Counsel offers the note in evidence.

Note admitted and marked Exhibit A.

Cross-examination by Mr. Hamlin.

Q. Please name the street and number of the plaintiff's residence? A. No. 47 Chestnut Street.

Q. How far is his residence from your residence? A. About 25 feet.

Q. How long has the defendant resided upon the street and at the number you have named? A. I have lived there with my family ten years, the plaintiff was at that time living at his present home. How long he had been residing there previous to that time I am unable to say.

Q. You said, in your direct examination, that you were acquainted with the plaintiff; how intimately are you acquainted with him? A. Very intimately.

Q. Is your intimate acquaintance with the plaintiff due to any relations other than that existing between next door neighbors?

Plaintiff's Counsel. Objected to as not cross-examination.

The Court. Objection overruled.

A. Yes, sir.

Q. State the other relations. A. We are brothers-in-law—his wife is my sister. I have also been associated with him in several business ventures.

Q. Are you associated with him in any business at this time? A. No, sir.

Q. Were you at the time you transferred the note in evidence to him? A. No, sir.

Q. What was the plaintiff's business at the time you delivered the note to him? A. He was a real estate broker.

Q. Where was his office at this time? A. At No. 98 Market Street.

Q. Where was your place of business at that time? A. No. 150 Market Street.

Q. How far was your place of business from the office of the plaintiff? A. About half a block, or in the neighborhood of 300 feet.

Q. Where were you at the time you indorsed the note? A. At the office of the plaintiff.

Q. Any other persons in the office at that time? A. I have no recollection of seeing any other persons there.

Q. The second day of May, 1901, was what day of the week? A. I do not recollect.

Q. State the hour of the day on which you indorsed the note? A. I do not recollect.

Q. Was it the forenoon hour or afternoon hour? A. I am unable to say.

Q. Was it at some hour between 9 o'clock in the forenoon and 6 o'clock in the afternoon? A. It must have been, because I know that Mr. Foster is never in his office later than 6 P. M., nor earlier than 9 A. M.

Q. Do you know Moses Simpson, chief clerk of the defendant? A. Yes, sir.

Q. To refresh your recollection as to the hour of the day on which you indorsed the note I ask you this question: "Do you not remember that you indorsed and delivered the note the same day that Mr. Simpson delivered to you, at your place of business, a message from the defendant concerning the transaction in which he gave the note to you?" A. I am not sure, possibly I did.

Q. Do you remember the time of the day this message was delivered? A. I do not.

Q. Did you not immediately, after the receipt of the message, go directly to the office of the plaintiff, and then and there indorse and deliver to him the note? A. To the best of my recollection I did not.

Q. To the best of your recollection when did you indorse the note, before or after you received the message? A. I do not remember.

Q. Do you remember of any business you called at the plaintiff's office to transact at that time, other than to sell the note to him? A. I have no recollection upon the subject.

Q. State the conversation between plaintiff and you, which resulted in the plaintiff's purchase of the note?

Plaintiff's Counsel. Objected to as not cross-examination.

The Court. Objection sustained, exception noted and bill sealed for defendant.

Q. You have said you are acquainted with the defendant; how well are you acquainted with him? A. Oh, very well, indeed.

Q. To what relations is your acquaintance with him due? A. Only business relations.

Q. To what business relations do you refer? A. I mean I have, during the three or four years preceding the date of the note in this case, sold him, many times, large quantities of agricultural products, and during all that time have been, and am now, a member of the board of directors of the bank in this city of which he is president.

Q. His place of business is also on Market Street? A. Yes, sir.

Q. How far from your place of business? A. Three blocks.

Redirect-examination.

Q. When were you last concerned in any business enterprise with the plaintiff? A. In the spring of 1899.

Recross-examination.

Q. What was the business in which you were, in the spring of 1899, concerned with the defendant? A. In the retail coal business.

Plaintiff rests at 4:30 P. M.

Mr. Hamlin opens for the defense.

GEORGE WELLS *sworn for the defendant.*

Examination by Mr. Hamlin.

Q. You are the defendant in this case? A. Yes, sir.

Q. How old are you? A. Sixty-five years.

Q. How long have you been a resident of the City of Philadelphia? A. Sixty-five years.

Q. What is your business? A. The business in which I am concerned, as sole proprietor, is the business of a wholesale dealer in agricultural products and groceries.

Q. At the time you gave the note in question who were present? A. Mr. Foster, the payee in the note, and the plaintiff.

Q. State all that occurred in the presence of Mr. Foster and the plaintiff on that occasion, in relation to the transaction furnishing the consideration for the note. A. Mr. Foster said to me, "I have purchased several thousand bushels of potatoes, and they will be delivered here in a week or two. How many bushels can I sell you at the rate of fifty cents a bushel?" I said, "I will take 2,000 bushels if they are delivered at my place of business on or before the first day of next May." I told him I must have them at that time because in a month or two after the demand would be for new potatoes. He said he would not fail to make the delivery on the first of May, and that he was very sure he could do it several days earlier. I then said, "Subject to the condition that they are here on the first day of May, I will take 2,000 bushels."

Q. What happened after you said you would take the potatoes?

Plaintiff's Counsel. Objected to, unless the conversation occurred in the presence of plaintiff.

The Court. Objection sustained.

Q. State whether or not the plaintiff was present when you had

the conversation with Mr. Foster, which you are about to relate in response to my last question? A. Yes, sir.

Q. State that conversation. A. He asked me how I desired to pay for the potatoes. I said, "I never depart from the 30-day rule." He said, "Well, then, if I do not deliver them until the first of May you will not pay until the first of June. About the 15th of this month my family and I are going to California, and while there I expect to make some large investments during the forepart of May. To arrange for this unusual draught on my bank account I would like to have as large a credit in this account as possible. To accommodate me in the matter would you be willing to give me your note now, payable in 60 days?" I said, "That would be a most unbusiness-like transaction; you might not deliver the potatoes at the time appointed, and in the meantime negotiate the note to an innocent purchaser." He said, "Failure of delivery at the time I have agreed to make it, is, I am sure, impossible, but to provide for such a contingency, I will agree to place the note in my bank, to be discounted on the second of May, and if the potatoes are not delivered on the first of May I will have the note returned to you." I said, "Why, then, do you want the note now? If you are willing to agree to not use the note until the second of May, how would it be of any advantage to you now?" He said, "I will not be here at that time, and if it is then in the hands of the bank the credit I may need there for my personal investments will be immediately given to me." I said, "Will you explain to the bank your agreement with me not to use the note until the second of May, and to return it to me if the potatoes are not delivered on the first of May?" He said, "I will."

Q. After he said, "I will explain the agreement," what did you do? A. I gave him the note.

Q. Were the potatoes delivered on the first of May? A. No, sir.

Q. What did you do, if anything, because of the failure of Mr. Foster to make delivery? A. The next day I caused a notice of the fact to be served by my chief clerk, Mr. Simpson, upon the Fifth National Bank, this being the bank in which Mr. Foster said he would place the note.

Q. Did you do anything else concerning the matter? A. Yes, sir, when my clerk returned and reported the information he had

received from the bank, I immediately wrote a message to Mr. Foster, and directed Mr. Simpson to deliver it at once.

Q. Have you got a copy of the message? A. Yes, sir.

Q. At what hour of the day did Mr. Simpson leave your place of business with the message? A. At ten o'clock in the forenoon.

Q. At what time did he return? A. He was absent from my store just one hour.

Q. When he came back what did you say?

Plaintiff's Counsel. Objected to as hearsay.

The Court. Objection sustained.

Q. Whether or not you subpoenaed Mr. Foster to produce the message? A. I did.

Q. When? A. Day before yesterday I caused a subpoena to be issued to him.

Q. Who served the subpoena? A. My clerk, Mr. Simpson.

Q. Whether or not the plaintiff ever demanded of you payment of the note before beginning this suit? A. Yes, about a week or ten days after it was due.

Q. What did you say on this occasion? A. The conversation occurred on the street. The meeting was accidental. I was going to noon-hour luncheon. He said, "Mr. Wells, I purchased your note in favor of Foster. I should have spoken about it earlier, but an extraordinary rush of business so commanded my attention that I did not think of it. It is now overdue several days. Is it convenient for you to pay it now?"

Q. What did you say to him? A. I accused him of being a party to a scheme to swindle me. I told him I would not pay the note unless compelled by the highest court to which I could appeal for protection.

Q. What reply did the plaintiff make to this? A. He denied my accusation, and said he would immediately commence legal proceedings against me.

Q. After the time he made the demand of which you have spoken, whether or not he ever said anything to you about the note? A. He never did.

Adjourned to 10 o'clock to-morrow A. M.

Now, May 22, 1903, court met, pursuant to adjournment.

GEORGE WELLS *recalled for cross-examination.*

Cross-examination by Mr. Coughlin.

Q. In what department of your store did the talk you had with Mr. Foster about the note and your purchase of the potatoes occur?

A. In the general salesroom of the produce department.

Q. You mean in the room where you sell produce to your customers? A. Yes, sir.

Q. How many people were in this room at that time? A. I do not remember.

Q. Is it possible that there were not any others besides the plaintiff, Mr. Wells, your clerks and yourself? A. No, sir.

Q. About what time of the day was the transaction? A. I do not remember the exact time.

Q. Was it the forenoon or afternoon? A. I am quite certain it was in the forenoon.

Q. The latter or forepart? A. Latter part.

Q. Is it not true that you always have a larger number of patrons in the salesroom of your produce department in the latter part of the forenoon than at any other part of the day? A. Yes, sir.

Q. Are you willing to testify that at any time during the year of 1901 you had on any business day, in the latter part of the forenoon, in the salesroom of your produce department, fewer than 50 customers at one time? A. I am.

Q. Fewer than 25? A. I will not positively so testify, and yet it might be true.

Q. How large is the salesroom you have mentioned? A. It is 50 feet by 30 feet.

Q. How many clerks are employed in this room? A. Most of the time ten.

Q. In what part of the salesroom did you talk with Mr. Foster about the potatoes and note? A. At my private desk in the rear of the room.

Q. Is this desk in an enclosure? A. No, sir.

Q. During the latter part of forenoons your clerks are very busy, are they not? A. Yes, sir.

Q. And because of the presence of so many customers there is a great deal of noise? A. No great noise. My clerks are not permitted to engage in conversation not necessary to the proper performance of their duties, and my customers are gentlemen.

Q. I did not intend to reflect upon the faithfulness of your clerks or the manners of your customers. I take it for granted that your business cannot be conducted, however careful your clerks and customers may be to avoid it, without creating considerable noise, especially when 25 or more of your customers are in the salesroom, and they all men. Have I made a mistake? A. Of course, under the circumstances a little noise is unavoidable.

Q. You have in your salesroom two elevators? A. Yes, sir.

Q. During business hours these elevators are in constant operation? A. Yes, sir.

Q. You also have, leading from the salesroom to upper floors, a flight of stairs, up and down which your customers are continually moving? A. Yes, sir.

Q. Then, too, you have in this room two telephone instruments which are used frequently during the business hours of the day? A. Yes, sir.

Q. At the time you gave Mr. Foster an order for potatoes were you acquainted with Edward Greenleaf, then a general life insurance agent, and having his office at No. 1001, Chestnut Street? A. I knew him, but not very well.

Q. He is not living now, is he? A. I think I did hear or read of his death.

Q. Did you observe Mr. Greenleaf in your salesroom at the time of your transaction with Mr. Foster? A. I did not.

Q. Will you testify that he was not there at that time? A. I will not so testify.

Q. Why? A. Because, no doubt, there were a great many people with whom I was better acquainted in there, and yet I have no recollection of having observed them.

Q. Of course, you would not testify they were in there, and for the same reason you would not testify that Mr. Greenleaf was not there? A. For the same reason I would not testify.

Q. In your examination in chief you said plaintiff was present at the conversation between Mr. Foster and you. I notice that you did not say he heard all of the conversation. Was this omission intentional or accidental? A. Accidental.

Q. Then you would have the court and jury to understand that in testifying that Mr. Foster was present, you also meant he heard all that was said in the conversation? A. Of course, I would not

say he heard every word, but I know he heard enough of the conversation to learn and fully understand the terms and conditions of the transaction.

Q. Why are you certain he heard so much of the conversation?

A. Because he stood not more than three or four feet from my desk.

Q. As to the distance you have stated you are not positive, are you, that it was not more than three feet? A. Quite positive.

Q. Did Mr. Foster say anything? A. Yes, in the beginning of the conversation.

Q. What did he say? A. He said, addressing Mr. Foster and myself: "Here you are, Greek against Greek. Begin the battle." We began the battle, and it is not ended yet.

Q. Have you recollection of any other remark of the plaintiff?

A. I have not, but I am quite sure he made other remarks.

Q. Of course, the conversation was not in a loud tone of voice?

A. No, sir. Still it was not in whispers.

Q. Was the personnel of your clerks the same as it is now?

A. Yes, sir.

Q. No doubt you have interviewed these clerks for the purpose of ascertaining whether they heard any of the conversation? A. I did.

Q. What was the result? A. They said they did not.

Q. Will you positively testify that the plaintiff did not immediately after making the remark you have quoted, retire from your desk, to a point in the room distant from your desk not less than ten feet, and engage in conversation with either Mr. Greenleaf or some other individual? A. I will testify that the point to which he retired is not ten feet, but I will not positively say he did not talk with some individual during the time Mr. Foster and I had our conversation.

#### Redirect-examination.

Q. Where was the plaintiff standing at the conclusion of your conversation? A. So near to me that, without moving forward, he laid his hand on my shoulder and said: "I hope you are having floods of prosperity."

Q. After the plaintiff thus assured you of his deep interest in your welfare what happened? A. The plaintiff and Mr. Foster walked from my presence into the street.

Recross-examination.

Q. How much time did your conversation with Mr. Foster occupy? A. I am sure not more than ten minutes.

EDMUND FOSTER *recalled for defendant.*

Subpœna issued in this case May 19, 1903, shown witness by defendant's counsel.

Q. Was this writ served upon you? A. Yes, sir.

Q. Who served it? A. Mr. Simpson.

Q. When? A. I think a day or two before the commencement of this trial.

Q. In this subpœna you are required to produce a message or letter bearing date the second of May, 1901, and relating to the note defendant gave you, bearing date 21st of April, 1901, payable in sixty days, and for \$1,000.00. Have you the message or letter referred to? A. No, sir.

Q. Why? A. Because the same day I received it I tore it into pieces and threw them into the waste paper basket of my office.

Q. What was afterwards done with these pieces, together with other waste papers in the basket? A. They were burned.

MOSES SIMPSON *sworn for defendant.*

Q. Are you employed by the defendant at his place of business in the produce department? A. Yes, sir.

Q. How long have you been in his service? A. Upwards of five years.

Q. In what capacity do you work for the defendant? A. I am chief clerk.

Q. Are you acquainted with the plaintiff and Mr. Foster? A. I am.

Paper shown witness by defendant's counsel.

Q. What have you in your hand? A. A carbon copy of the message I delivered to Mr. Foster on the second of May, 1901.

Q. Whose name is signed to the message? A. The name of the defendant.

Q. If you know, who wrote the name? A. I saw the defendant write it.

Q. You said you delivered the message, of which the paper in your hand is a copy; in what manner and where did you deliver it?

A. I handed it to Mr. Foster at his office.

Q. If you remember of any other persons being in his office when you gave it to him, state who they were. A. The plaintiff and his wife were there.

Q. Whether or not Mr. Foster read the message in your presence? A. Yes, sir.

Q. After reading it what did he say? A. He said: "Is it true those potatoes have not been delivered?" I said: "Yes, sir." He said: "Is it possible; I supposed they were there two or three days ago. The delay must be due to some accident on the railroad or mistake in the consignment. You tell the old gentleman that I will attend to the matter at once." I said, as stated in the message: "He does not want them now." He said: "I will talk with him about that, I think I can prevail upon him to change his mind."

Q. Was the plaintiff present when this talk occurred? A. I am positive his wife was there when Mr. Foster talked about the message, and, according to the best of my recollection, he was. He did not remain long after I entered. He went out ahead of me, but his wife was still in the office when I came out.

Q. About how long were you in his office? A. Probably not more than ten minutes.

Q. After you left the office, and before you returned to your employer's place of business, whether or not you saw Mr. Foster. A. Yes, sir, on the opposite side of the street, just in front of the building in which the plaintiff has his office. I stopped in a cigar store. While there I saw Mr. Foster and the plaintiff's wife entering the hall of the building leading to the elevator. Mr. Foster had in his hand an envelope that looked exactly like the one I had delivered to him. Because of the thought this fact suggested to my mind, I decided to watch a little while. After an interval of about ten minutes the plaintiff and Mr. Foster walked from the hall on to the sidewalk and there separated, Mr. Foster going in the direction of the defendant's place of business, and the plaintiff in an opposite direction. I then hastened to the store and found Mr. Foster there. Mr. Wells, the proprietor, was not in.

Q. What did Mr. Foster say to you?

Plaintiff's Counsel. Objected to for the reason that the plaintiff was not present, and hence anything said by Mr. Foster on that occasion, is incompetent to effect his rights in this action.

Defendant's Counsel. We allege a fraudulent combination between Mr. Foster and the plaintiff to deprive the defendant of the right to use his equitable defense to the note in question, and thus unjustly compel him to pay it.

The Court. We think the defendant has shown enough to justify us in submitting the allegation of fraudulent combination to the consideration of the jury. Hence, the objection is overruled. Exception noted and bill sealed for the plaintiff.

A. He said: "Mr. Simpson, I forgot to tell you that I had transferred the note to Frank Smith, my brother-in-law. Please inform Mr. Wells of this fact." He also requested me to say to Mr. Wells that the potatoes would be delivered in a day or two.

Q. Whether you conveyed the message to your employer? A. I did.

Q. What did he do or say? A. The next day he directed me to warn Mr. Foster not to undertake to deliver the potatoes, as he would not under any circumstances receive them. The same day I delivered the message to Mr. Foster.

Q. Whether or not Mr. Foster, after you conveyed this message to him, ever did attempt to deliver the potatoes. A. He did not.

Q. What did he say when you told him the defendant would not receive them? A. He said: "You tell him that Mr. Smith will certainly compel him to pay the note, and to save himself from loss he better take the potatoes."

Adjourned until two o'clock P. M.

Court met pursuant to adjournment.

MOSES SIMPSON *recalled*.

Cross-examined by Mr. Coughlin.

Q. You have taken a very active interest in this case? A. No greater interest than was necessary to obey the instructions of my

employer, and take advantage of opportunities to secure information for him which I thought would be valuable to him in the trial of this case.

Q. I suppose your employer generously rewarded you for these services. A. He has not given me any pecuniary reward; it is possible that my efforts have gained for me increased confidence, in his mind, of my trustworthiness.

Q. Has he not since this suit was begun increased your salary?

A. Yes, sir.

Q. Are your services, as clerk, any more valuable to him than they were prior to the commencement of this suit? A. I think not.

Q. Are you now required to do any work which was not demanded of you prior to the commencement of this suit? A. No, sir.

Q. Can you name a reason why your salary was advanced, other than that furnished in the service you have rendered him in this case? A. I do not now, and never did, believe that he gave me the increase as compensation for what I have done for him in this case. I do, however, believe that in performing this service for him I gained the goodwill of his gratitude, and by it he was prompted to increase my salary.

Q. Did he not tell you that he gave you the increase on account of what you had done for him in this case? A. He did not.

Q. Were you not influenced by the increase to make more vigorous effort to aid him in this case? A. Possibly I have been more vigilant and active in this service than I would have been if the increase had not been given to me.

Q. Are you positive the plaintiff was in the office of Mr. Foster when you delivered the message of which you have spoken in your testimony in chief? A. I am.

Q. Was he sitting or standing? A. He was standing.

Q. It was raining, was it not? A. I am not positive, but I think it was.

Q. When you entered the office was not the plaintiff standing near the door with an umbrella in his hand? A. He was standing near the door. I do not recollect seeing an umbrella in his hand.

Q. Will you testify that he did not, in less than one-half minute after you entered the office, go out? A. I will not positively, but I think he was there more than half a minute after I entered.

Q. Will you positively testify that he was there long enough to

hear you say anything to Mr. Foster about the message? A. Not positively, but according to the best of my recollection he was there long enough to hear me say nearly, if not all, I did say about the message.

Q. What was the color of the envelope in which you delivered the message? A. White.

Q. What was the size of the envelope? A. The usual letter size.

Q. How long and how wide? A. About three and one-half inches wide and six inches long.

Q. When you saw the envelope in his possession, while you were standing in the cigar store, upon what part of his person did you see it? A. In his right hand.

Q. Where in his right hand? A. One corner was between his thumb and forefinger.

Q. How wide is the street at the cigar store? A. I do not know the exact width, but I think it is sixty feet.

Q. You mean between the curbs? A. Yes, sir.

Q. How wide is the sidewalk in front of the cigar store? A. At least ten feet.

Q. How wide is the sidewalk on the other side of the street? A. About ten feet.

Q. When you saw Mr. Foster with the envelope in his hand, he was walking in or near the center of the sidewalk, was he not? A. Yes, sir.

Q. Then at the time you saw the envelope in his hand the distance between Mr. Foster and you was at least seventy-five feet? A. Yes, sir, I think it was.

Q. Could you see the address on the envelope? A. No, sir.

Q. Could you see any writing or printing on the envelope? A. I do not believe I could.

Q. You are, therefore, positive you did not see any printing or writing? A. I did not see any because of the distance between Mr. Foster and myself.

Q. Then, in your statement in chief that the envelope you saw in Mr. Foster's hand looked like the one you delivered, you meant to say that the former seemed to have the same color and dimensions as the latter? A. Yes, sir.

Q. Are not envelopes such as you delivered in common use?

A. Yes, sir.

Defendant's Counsel. Message referred to in the testimony of the witness last called offered in evidence.

Plaintiff's Counsel. Objected to for the reason that it has not been shown that the plaintiff had knowledge of its contents. Hence, the message is incompetent to effect the right of the plaintiff in this action.

The Court. We do not hesitate to say that the testimony thus far adduced to charge the plaintiff with knowledge of the contents or purport of the message is, in a large measure, unsatisfactory. But, not being convinced that it is wholly undeserving of consideration by the jury, and being reminded of the allegation of defendant that a fraudulent combination existed between the indorser and the plaintiff, and of the circumstances shown in the testimony in support of this allegation, the objection is overruled.

Exception and bill sealed for plaintiff.

Defendant's counsel reads the message:

"Philadelphia, Pa., May 2, 1901.

*"Mr. Edmund Foster.*

"Dear Sir.—The thousand bushels of potatoes I ordered of you not having been delivered per our agreement I notify you of my determination not to accept delivery of same at any time in the future. You are, therefore, requested to return to me immediately, through the bearer, Mr. Simpson, the note I gave you, subject to the agreement that you would return the same to me if the potatoes were not delivered on the first day of this month.

"Yours respectfully,

"GEORGE WELLS."

JOHN SNODGRASS, *sworn for defendant.*

Examined by Mr. Hamlin.

Q. Are you acquainted with Edmund Foster, and George Wells, the defendant in this case? A. I am.

Q. What is your business? A. Produce broker.

Q. If you ever had a conversation with Mr. Foster, in which he spoke of a sale of potatoes to Mr. Wells, state when, where and what he said? A. I had such a conversation with Mr. Foster in my office, No. 45 Walnut Street, in the latter part of April, 1901. He said he had sold Mr. Wells potatoes, and that he had agreed to deliver them not later than the first of next month. He then asked me if I could procure them for him. I replied I could not do it before the tenth or fifteenth of next month. He said he could not wait until that time; that if he failed to make delivery the first, he would lose the sale.

Cross-examined by Mr. Coughlin.

Q. Have you talked with anybody about this conversation? A. Yes.

Q. To whom? A. Mr. Wells.

Q. Where? A. Not long after the commencement of this suit.

Q. Where? A. At my office.

Q. Any persons present other than Mr. Wells and yourself? A. No, sir.

Q. How did you happen to speak to him about the matter? A. He told me of his transaction with Mr. Foster, and of the suit brought against him by Mr. Smith. This reminded me of my conversation with Mr. Foster, and I repeated it to him.

Q. Mr. Wells and you were then and are now very close friends? A. Yes, sir.

Q. You were not then and are not now on very friendly terms with either Mr. Smith or Mr. Foster? A. I am not an enemy of either, but confess I do not have that regard for either which I entertain for friends.

Q. How do you know it was in the latter part of April, 1901, the conversation occurred? A. Mr. Wells asked me the date of the conversation, at that time, and I recalled a letter I had received from Mr. Foster shortly before then. I looked at this letter and found it was dated the 20th of April, 1901.

S. J. STROUS *sworn for defendant.*

Examined by Mr. Hamlin.

Q. You are a member of the bar of Philadelphia County? A. Yes, sir.

Exhibit A shown witness by plaintiff's counsel.

Q. Whether or not the plaintiff consulted you respecting the right to recover on that note?

Plaintiff's Counsel. Q. In the consultation referred to in the question just propounded to you, what was the relation between you and the plaintiff? A. That between attorney and client.

Plaintiff's Counsel. The proposed testimony is objected to because the witness is incompetent, he having obtained the information to which his attention has been directed while serving the plaintiff as his counsel.

The Court. The objection is sustained.

MRS. FRANK SMITH *sworn for defendant.*

Examined by Mr. Hamlin.

Q. Are you acquainted with the plaintiff? A. Yes, sir, he is my husband.

Plaintiff's Counsel. The witness being the wife of the plaintiff she is incompetent to testify in this case at the instance or on behalf of the defendant.

The Court. Objection sustained.

Defendant rests at 3:50 P. M.

FRANK SMITH *sworn for plaintiff in rebuttal.*

Examined by Mr. Coughlin.

Q. You are the plaintiff in this case? A. Yes, sir.

Q. You are also the person to whom the note in question was indorsed by Mr. Foster, the payee named in the note? A. Yes, sir.

Q. State fully all the details of the transaction through which you became the owner of the note? A. Some time during the forepart of May, 1901, Mr. Foster came to my office in company with my wife. Immediately after coming in he said he was quite seriously embarrassed because he was unprovided with means sufficient to satisfy some demand he had undertaken to meet that day. I said, "Why not have your note discounted?" He said, "I have gone to

the limit on that line, but I have a note of a thousand dollars drawn by George Wells for the potatoes I sold him last month. I wish you would cash it for me." I only had \$600.00 available to me at that time, and I said to him, "I will let you have that amount for the note, and when it is paid will account to you for the balance of the \$1,000.00." He said the arrangement would give him the relief needed, and he accepted my proposition. He then indorsed and delivered the note to me and I gave him the \$600.00.

Q. Whether or not Mr. Foster then said anything to you concerning the message in evidence. A. He did not.

Q. Whether or not previous to your purchase of the note you knew of the existence of the message from any source? A. No, sir.

Q. Whether or not you had knowledge from any source of the failure of Mr. Foster to deliver the potatoes for which the note was given, at the time appointed in any agreement between Mr. Foster and defendant prior to your purchase of the note. A. I did not.

Q. Did you hear any part of the conversation relating to the note or the agreement of the defendant to purchase the potatoes? A. I did not.

Q. State the reasons why you did not hear. A. Immediately after saluting the defendant, Edward Greenleaf, now dead, standing at a point at least fifteen feet from where the defendant and Mr. Foster made their bargain, called me. I walked over to him and he had some plan of life insurance he wanted me to invest in. We talked quite a while about the plan and then I returned to Mr. Wells' desk, where he and Mr. Foster transacted their business. After I returned to him nothing was said about the agreement or note, and, as I recollect, not more than a dozen words about anything else.

Q. Whether or not anything besides the distance between you and the defendant prevented you from hearing the conversation between Mr. Foster and the defendant? A. Yes, at that time there were more than fifty customers in the room, some of whom were continually walking up and down the stairs to and from the upper floors; ten or fifteen clerks were constantly moving about the room and talking with customers; the elevator was running at short intervals, and somebody was, most of the time, answering telephone calls. Because of the noise thus occasioned I am sure I could not have heard a conversation, in an ordinary tone of voice, carried on not more than six or eight feet from me.

Q. Whether or not you had knowledge from any source of any of the terms or conditions of the defendant's agreement to purchase the potatoes, or of any terms or conditions upon which he gave the note in question, prior to the date or at the time of your purchase of the note? A. No, sir.

Q. State whether or not you knew, of your own knowledge or through information furnished by others, that the note was subject to any terms or conditions other than those in the note itself? A. I did not.

Q. You heard the testimony of the defendant concerning a conversation with you in which you spoke of having purchased the note; did you have a conversation at a later date? A. Yes, sir.

Q. State what was said in this latter conversation? A. It occurred not long after the first. He apologized for the harsh language he used when I spoke to him about the note, saying he was sorry he accused me of attempting to swindle him, and that it appeared to him then as if we were both victims of Foster's trick. I told him I did not know anything about a trick; I bought the note, and, of course, should insist upon his payment of it. He said, "I am not willing to do that now, but possibly I will be after further investigation."

Q. Did you have any further talk with him about the note? A. No, sir.

Cross-examined by Mr. Hamlin.

Q. Do you remember seeing Mr. Simpson, the defendant's clerk, at Mr. Foster's office about the time the note was transferred to you? A. I had forgotten the incident, but because of the testimony of that gentleman, it occurred to me that I did see him there about that time.

Q. Do you remember of your wife being there with you at that time? A. Am not positive, but think she was.

Q. Is it not true that Mr. Foster came to your office with your wife the same day, and then and there, in her presence, the note was indorsed by Mr. Foster and delivered to you? A. It might be true, I do not recollect.

Q. You do remember, however, that your wife came to your office with Mr. Foster, and the transaction occurred in her presence. A. Yes, sir.

Q. Did not Mr. Foster have in his hand, when he at that time entered your office, an envelope? A. If he did I have no recollection of seeing it.

Q. Do you remember that after the note was delivered to you, you and Mr. Foster came out of the building together, and on the sidewalk separated, he going towards the defendant's place of business, and you in the opposite direction? A. I remember that we came out of the building together, but I do not recollect how or where we separated.

Q. Did not Mr. Foster, while he was in your office, or at the time you separated, tell you where he was going? A. I do not recollect.

Q. Did you ever have knowledge of the message in evidence before the commencement of this trial? A. Yes, sir, about six months after I purchased the note, my wife spoke to me about it.

Q. What did you do when you learned the fact? A. Nothing. It did not occur to me that my rights were in any way affected by the message.

Q. Did you speak to Mr. Foster about it? A. I am not sure, but I do not believe I did.

Q. In what form did you give the \$600.00 to Mr. Foster? A. In cash, which I had in my office safe.

Q. Has not Mr. Foster since returned the \$600.00 to you? A. No, sir.

Q. Has he not given you collateral security for the repayment of it? A. No, sir.

Q. Have you not, since you took the note from him, become indebted to him, and if you have, has he not agreed with you to release you from payment of this account, in the event of your failure to recover in this suit?

Plaintiff's Counsel. Objected to as immaterial.

The Court. What is the purpose of the proposed testimony?

Defendant's Attorney. First. To prove a circumstance which, we insist, affords some evidence in support of our allegation of fraudulent combination, and, second, to prove conduct on the part of Mr. Foster contradictory of any testimony the plaintiff may adduce in opposition to the evidence of the defendant respecting the agreement we allege, in regard to the giving of the note, and corrobora-

tive of our testimony touching this agreement. We respectfully submit that, it having been shown in the evidence of the plaintiff that he is seeking to recover \$400.00 of the \$1,000.00 for the benefit of Mr. Foster, he, Mr. Foster, is a party to this action, and, for the purpose of defeating the attempt to recover anything for him, we have a right to present any evidence which would be admissible if he were the plaintiff of record in this case.

The Court. The problem the object submits to our consideration is this: "Is the proposed testimony material?" Of course, if such an arrangement as that alluded to in the question was made after the purchase of the note, it is difficult to understand how it tends to prove a fraudulent conspiracy in the purchase of the note. To affect the rights of the indorsee male fides in him must be shown at the time of purchase. Hence, for the purpose first named in the defendant's offer, the objection is sustained. Exception and bill sealed for plaintiff.

In its relation to the other purposes named, we are of the opinion that the testimony is material. Mr. Foster is undoubtedly a beneficiary party to this action, and, therefore, any conduct on his part consistent with the theory of the defense as to the absence of any right in him to recover, is material. We overrule the objection in respect to the second purpose. Exception and bill sealed for plaintiff.

A. We have such an understanding, but no real agreement.

Q. Did not Mr. Foster, some time before the commencement of this action, agree that he would not require you to pay his account against you unless you recovered in this suit? A. He did.

Q. Do you not expect to be thus saved from loss if you do not recover in this action? A. I expect him to fulfill his promise.

Q. His account against you amounts to at least \$600.00, does it not? A. I think so.

Q. Did you not tell George Allen that whatever defense the defendant set up in this case it would not cause you any worriment, as you were amply indemnified against loss by Mr. Foster? A. I did not.

Q. You are acquainted with Mr. Allen? A. Yes, sir, slightly.

Q. Did you ever have any talk with him on the subject? A. No, sir.

Q. You have said you did not hear the agreement between the defendant and Mr. Foster, now did you tell Mr. Allen that you did

hear it, but did not suppose at the time you purchased the note that it would affect your rights as an indorsee? A. I did not.

Q. Is it not true, at the time you took the note, you did not believe that, if you did have knowledge of such an agreement as that testified to by the defendant, it would defeat your right to recover in this case? A. Not then having such knowledge I did not form any opinion respecting the matter.

Q. When you advanced the \$600.00 to Mr. Foster, on account of the note, you were familiar with the defendant's financial rating? A. I think I was.

Q. You knew that he was responsible for one hundred times the amount of the note? A. Yes, sir.

Q. You knew that no bank in Philadelphia would hesitate to discount his paper for \$1,000.00 or \$50,000.00? A. Yes, sir.

Q. Well, then, did it not seem peculiar to you that Mr. Foster did not go to the banks with the note instead of bringing it to you, especially in view of the fact that he could have gotten \$1,000.00 for it from them and you gave him only \$600.00 for it? A. I do not remember of having so thought of his action.

Q. You simply offered to advance him the \$600.00 without making inquiry of him of the reason why he did not seek the accommodation of a bank? A. Yes, sir.

Q. And he did not volunteer any explanation of his coming to you instead of going to the banks? A. No, sir.

Q. Did not the defendant say to you, in the conversation to which you have testified, that he was surprised at your action in aiding Mr. Foster to cheat and swindle him by a rogue's trick? A. No, sir, he said just what I have repeated.

EDMUND FOSTER *recalled by plaintiff in rebuttal.*

Examined in chief by Mr. Coughlin.

Defendant's Counsel. We respectfully request that the counsel for plaintiff state in writing the testimony he proposes to submit through this witness.

Plaintiff's Counsel. We propose to prove by the witness on the stand: First. That the agreement respecting the sale of the potatoes was not as represented by the defendant in several material particulars. Second. That the note in question was not given subject

to the conditions stated by the defendant in his testimony in chief. Third. That the plaintiff did not hear the agreement respecting the sale of the potatoes, and that the witness never stated to him the terms or conditions of the same.

Q. State briefly your contract with the defendant, concerning your sale to him of the potatoes. A. I sold him the potatoes for \$1,000.00. I am quite certain that there was no positive undertaking on my part to make the delivery, as he has stated, on the first of May. Nor have I any recollection of its being agreed that the bargain should be considered annulled if they were not then delivered. I do not remember, he said anything about the likelihood of his having some trouble to dispose of them if they were not delivered as early as the first of May, but I did not then, and do not now, understand that he meant the sale was conditioned upon the delivery being made at that time.

Q. Why did you not deliver the potatoes? A. The parties from whom I purchased them absolutely engaged to make the delivery on the 25th of April, and after that date, until I received the message in evidence, I supposed they had been delivered. I think on the 5th or 6th of May I saw the defendant and explained to him my disappointment and said to him, "The potatoes will be here to-morrow." He said, "I will not accept delivery. I told you I would not in my message. I have not since changed my mind." I said, "Why not take them? I am sure you can get rid of them at a reasonable profit." He persisted in his refusal to accept, and I warned him of the fact that I had transferred the note and told him he would be compelled to pay the note in spite of his refusal to take the potatoes.

Q. What agreement, if any, did you make with the defendant respecting the note? A. After he gave me the note he said, "If you do not deliver the potatoes, of course, you will return the note to me?" I said, "Of course, I will, if you do not refuse to take them." I do not recollect any further talk about returning the note.

Q. During the time you were talking with the defendant about selling him the potatoes, and the note, where was the deceased plaintiff? A. In the salesroom of the defendant, distant from where he and I were twelve or fifteen feet, engaged in conversation with Mr. Greenleaf.

Q. Did he hear what the defendant or you said? A. No, sir.

Q. How do you know he did not hear? A. We talked in a low tone of voice, and there was great confusion and considerable noise in the room. Because of these conditions I know he did not hear.

Cross-examined by Mr. Hamlin.

Q. You have not, as I understand it, undertaken to positively deny the defendant's statement of the terms of the agreement. A. I have undertaken to positively state my recollection and understanding of the agreement.

Q. Will you positively testify that it was not a part of the agreement that unless the potatoes were delivered on the first of May the defendant was to be released from his promise to buy? A. I will positively testify that such was not my understanding of the agreement.

Q. Will you positively testify that nothing was said which justified in the mind of the defendant such an understanding? A. I do not recollect anything.

Q. Will you admit the possibility of anything having been said which would furnish warrant for such an understanding? A. I will admit that I do not now remember all that was said, and, of course, I could not positively testify that in the things I have forgotten there was not some slight excuse for his entertaining such an understanding.

Q. According to your understanding was there any limit to the time within which you were given the privilege of delivering the potatoes? A. Do not recall any agreement respecting the time of delivery, but I think it was understood that they were to be delivered in the forepart of May.

Q. Why do you think that was the understanding? A. Because he spoke of the likelihood of having trouble to get rid of them at a later period.

Q. You knew that in this remark he stated the truth, did you not? A. Yes, sir.

Q. Of course, you understood the potatoes were to be delivered before the time appointed for payment of the note? A. Not because of anything said, which I now recollect, but by inference, I did.

Q. You heard the defendant state the reason why he gave you the note at the time he ordered the potatoes? A. Yes, sir.

Q. Is that statement true? A. I have no recollection of telling him I would not negotiate the note, or that I would return it to him

if the potatoes were not delivered on the first of May. As to the remainder of his statement it corresponds with my recollection.

Q. You did then tell him you were going to California, where you expected to make large investments? A. Yes, sir.

Q. You did tell him you wanted the note in order to have it placed to your credit in your absence? A. Yes, sir.

Q. You did tell him you would notify the bank that the note was given to you subject to conditions named by the defendant at the time you received the note from him? A. Not remembering any conditions, of course, I do not now recollect any such promise.

Q. You did not go to California? A. No, sir, unexpected interference prevented.

Q. Did you tell John Allen that you did undertake to deliver the potatoes on the first of May and to return the note to the defendant if you failed to make the delivery at that time, but you had transferred the note so he could not use the agreement in a suit to recover the note? A. I never did.

Court adjourned to 10 A. M., 23rd day of May, 1903.

Now, May 23, 1903, court met pursuant to adjournment.

Counsel for Defendant. May it please the court, I very much regret that I am compelled to announce the death of my client, and suggest the substitution of his executor, Francis Jordan. The defendant was killed in a railroad accident last evening. Reasons of an unusual character seem to make it necessary to not allow the most unfortunate event to interrupt this trial. Hence, this morning we had the will of the deceased probated, and are, therefore, ready to proceed with the hearing.

Counsel for Plaintiff. We also very much regret the melancholy incident. We consent to the proposition of the plaintiff to continue the trial.

The Court. The clerk will enter of record the suggestion of death and substitution of executor.

EDMUND FOSTER, *recalled by the plaintiff.*

Defendant's Counsel. Please state what you propose to prove by the witness.

Plaintiff's Counsel. We propose to have him state more fully some items of the agreement relating to the purchase of the potatoes, and the giving of the note, to which his attention was particularly directed in the cross-examination.

Defendant's Counsel. Objected to, because the witness is incompetent, the other party to the agreement referred to being dead.

The Court. Objection sustained.

JOHN PLUMBER *sworn for plaintiff in rebuttal.*

Counsel for Defendant. Object to the witness for the reason that he is incompetent, he having been convicted in a court of this Commonwealth for the crime of perjury. To prove the truth of this statement we offer in evidence the record of the case in which he was convicted:

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SEPTEMBER SESSIONS, A. D. 1902.

COMMONWEALTH,	}	Perjury. Thomas Blackwell, Pros.
No. 292,		Transcript filed 1st of February, 1902.
vs.		Defendant is committed in default of
JOHN PLUMBER.		bail.

Now, May first, 1902, issue joined and jury called and jury came, to wit, Edward Pumper, Thomas Driver, Jacob Slasher, John Wilhelm, Charles Orr, Eli Hopper, Patrick Sullivan, John Whitwisher, Fred Skip, James Johns, John Williams, William Jones, who being sworn according to law, find the defendant guilty as indicted.

Now, June 20th, court sentences the defendant, John Plumber, to pay the Commonwealth a fine of \$500.00, pay the costs of prosecution, and undergo imprisonment in the Philadelphia County prison for the term and period of seven calendar months, and that he stand committed until this sentence is complied with.

Counsel for defendant to the witness:

Q. Are you the person named in the foregoing sentence of the court? A. Yes, sir.

Q. Did you serve the term mentioned? A. I did, but was innocent, the verdict of the jury was unjust.

The Court. The objection sustained.

Plaintiff rests.

MOSES SIMPSON, *recalled for defendant in surrebuttal.*

Counsel for plaintiff requests counsel for defendant to state what he proposes to prove by witness.

Counsel for Defendant. We propose to prove by the witness that Edmund Foster, the payee of the note in suit, did say to John Allen that he undertook to deliver the potatoes on the first day of May, and to return the note to the defendant if he failed to make the delivery at that time, but he transferred the note so he (defendant) could not use the agreement in a suit to recover the note.

Q. State whether or not Edmund Foster made the statement to John Allen we have just quoted? A. He did.

Q. When did he make this statement? A. About six months ago.

Q. Where? A. I do not know, Mr. Allen did not tell me.

Counsel for Plaintiff:

Q. Did you hear Mr. Foster make the statement of which you have spoken? A. No, sir.

Q. How did you obtain your knowledge of his having made the statement? A. Mr. Allen told me he made it.

Counsel for Plaintiff. We object to all of the testimony of the witness respecting the alleged statement, because it is hearsay, and move that the same be stricken from the record.

The Court. Objection sustained, and motion to strike out testimony allowed.

JOHN ALLEN *called for defendant in surrebuttal.*

Counsel for plaintiff asks leave to examine the witness on the voir dire with a view of ascertaining the facts in regard to his competency.

The Court. Leave is granted counsel for plaintiff.

Q. Do you believe in a Divine Being, the Avenger of falsehood and perjury among men? A. I do not.

Q. Do you believe in the existence of a God who will punish a man if he swears falsely? A. I do not.

Counsel for Plaintiff. Witness objected to because he is incompetent.

The Court. Objection sustained.

Defendant rested at 11:30 A. M. and testimony closed.

Immediately upon conclusion of the testimony points were submitted in writing to the court and argued. Court adjourned until 2 P. M.

Court met pursuant to adjournment.

Mr. Hamlin addressed the jury in behalf of defendant, and Mr. Coughlin in behalf of the plaintiff.

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#### THE CHARGE OF THE COURT.

*Gentlemen of the Jury:*

It is now the duty of the court to direct your attention to the questions of fact, upon the determination of which your verdict in this case must be founded. It is also our province to give you instructions concerning the law by which the effect of the facts ascertained by you, upon the rights of the parties to this action, is measured. In the performance of this duty we are not at liberty to suggest or intimate to you any opinion we may entertain respecting the truth of any controversy of fact. Such contention in the testimony you, alone, are authorized to determine, and the court is not allowed in any manner to influence your conclusions. In our charge to you this limit to our privilege we shall endeavor to regard with the utmost fidelity.

To assist you in your deliberation upon your verdict we shall, in a general way, remind you of such testimony as we deem it import-

ant to consider. If, however, we do not allude to all of the evidence which you believe material, you must not restrict your investigation to the scope of our allusions, but use the light of all the testimony in the case in your effort to agree upon a verdict.

This action was instituted to recover moneys which, it is alleged, the defendant promised to pay Edmund Foster or order. The instrument in which the defendant undertook this obligation is a promissory note. The original parties to the contract, thus evidenced, are called maker and payee. In this case the maker is the defendant, and the payee is Edmund Foster. The note is for \$1,000, and was executed and delivered by the defendant to Edmund Foster on the first day of April, 1901. The consideration which influenced the defendant to make the promise contained in the note was an agreement on the part of the payee to deliver to him, at his place of business, in the City of Philadelphia, 2,000 bushels of potatoes.

The note has all the characteristics necessary to the negotiability of such an instrument in this State. A note which may be transferred by indorsement or by delivery merely, so as to vest in the person to whom it is transferred, the legal title to the same, and the right to sue thereon in his own name, is negotiable. The statute of this State provides that an instrument to be negotiable, (1) must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand, or at a fixed or determinable future time, and (4) must be payable to order or to bearer.

You will observe that all these essentials are in the note in question. Hence, the plaintiff's legal title to the note and right to sue thereon cannot be questioned. The note was transferred to him through indorsement by Mr. Foster, the payee. Indorsement is the act of the payee of a negotiable instrument, in writing his name on the back of the instrument for the purpose of transferring his property in the same to another. Indorsement was necessary in this case because the note was payable to order. If it had been drawn payable to Edmund Foster or bearer, delivery, alone, by Mr. Foster to the plaintiff, would have been sufficient.

Mr. Foster, in negotiating the note to the plaintiff by indorsement, the law absolutely assumes, undertook to warrant (1) that the note is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties to the note had

capacity to contract; (4) and that he has no knowledge of any fact which would impair the validity of the note or render it valueless. The parties to the contract resulting from indorsement are called indorser and indorsee, the former being in this case Mr. Foster, and the latter the plaintiff.

None of the facts or principles of law to which we have thus far directed your attention are subjects of any controversy in this case. The execution and delivery of the note, the nature of the consideration of the defendant's promise in the note, and the negotiation of the note by the payee therein to the plaintiff, are established in the evidence of the plaintiff, and not denied by the testimony submitted on the part of the defendant. Hence, we say to you, you are at liberty to presume the admission of all these facts. Thus, beginning your deliberation, your consideration of the testimony will be limited to that relating to the questions of fact introduced after the plaintiff closed his case in chief. In other words, it is unnecessary for you to consider any contention of fact not involved in the testimony of the parties relating to the allegations of the defense.

The answer of the defendant to the plaintiff's case in chief mainly consists of three propositions:

#### I.

That he gave the note in question to Mr. Foster subject to an agreement in which he, Mr. Foster, promised he would not negotiate the note or otherwise use it previous to the first day of May, 1901, and if the potatoes, constituting the consideration of the note, were not delivered on that day he would have the note returned to the defendant.

#### II.

That the plaintiff, as to the difference between the amount of the note and the price he paid for the same, is trustee for Mr. Foster, and, therefore, he cannot recover this difference, if the jury believe the testimony of the defense respecting the alleged contemporaneous agreement, even if the plaintiff never had knowledge of said agreement and purchased the note in good faith.

#### III.

That the plaintiff, at the time the note was transferred to him, had knowledge of the entire transaction, including the alleged agree-

ment we have mentioned, and on account of which, it is alleged, the note was given by the defendant to Mr. Foster.

The questions of fact submitted to you in these propositions should be considered by you in the order in which we have presented them. We make this suggestion because, as you no doubt observe, unless you find the facts as stated in the first proposition, consideration of the questions in the others is wholly unnecessary. Hence, we advise you to begin your deliberation with the inquiry, "Did Mr. Foster, before or at the time of the delivery of the note to him, agree that he would not negotiate or otherwise use the note previous to the first day of May, 1901, and that if the potatoes were not delivered at that time he would have the note returned to the defendant?"

Now, regarding this controversy, who has given you the truth—the defendant or Mr. Foster? You have heard their testimony, seen their conduct as witnesses, and listened to the able and exhaustive arguments of counsel.

In the light thus furnished you must endeavor to agree upon a conclusion. We find it difficult to decide upon a method of presenting the testimony of Mr. Foster to you. It does not involve an unqualified denial of the defendant's contention that there was an agreement that the sale of the potatoes should be cancelled and the note returned to him if the delivery was not made on the first day of May. He said he did not recollect such an agreement; that he was not quite certain that there was no positive undertaking on his part to make the delivery, as he (the defendant) has stated, on the first day of May.

We have decided to submit to you this testimony in the following manner: 1st. Does it contradict the testimony of the defendant? 2nd. If you find it does contradict the testimony of the defendant, does it convince you that the defendant did not tell the truth? In your consideration of the first question you should apply to the words used by Mr. Foster that meaning which is accorded to them in the ordinary affairs of life. Observing this rule, what meaning do you ascribe to, "I am quite certain;" to "Nor have I any recollection;" to "I positively testify that it was not my understanding that the agreement to buy the potatoes was to be annulled if they were not delivered on the first of May;" to "I have no recollection of telling him I would not negotiate the note, or that I would return it to him."

The important words in these extracts for you to consider are, "quite certain," "recollection," and "my understanding." Do these words, in their relation to the other words with which they are associated, convey meanings contradictory of the defendant's testimony? What is your interpretation of the words, "quite certain?" Do they so effect the statement of the witness as to make it the expression of an opinion or recollection in which the possibility of a mistake is admitted; or does the statement, in spite of these words, express a fact? You should also in like manner ascertain the meaning of the words "my understanding." Do these words deny the testimony of the defendant that the sale of the potatoes was conditioned upon delivery on the first day of May, or do they merely declare that he, the witness, did not understand that such a condition was in the agreement of purchase?

If you find the agreement was as stated by the defendant, he was not compelled to accept delivery of the potatoes at any time after the first day of May, nor to pay anything to Mr. Foster on account of his promise to buy the potatoes. Also, if you find that the note was accepted subject to the conditions, viz: That it should not be negotiated or otherwise transferred before the second day of May, and if at that time the potatoes had not been delivered the note should be returned to the defendant, it being conceded that delivery was not then made, the defendant could not be compelled to pay the note or any part of it to Mr. Foster. If, however, you find that no special time was appointed for the delivery of the potatoes, and that tender of delivery was made by Mr. Foster and acceptance refused by the defendant, and that the note was not given subject to the conditions to which the defendant testified, Mr. Foster would be entitled to recover the full amount of the note, together with lawful interest, and the plaintiff, having succeeded to the rights of Mr. Foster, he would also be entitled to the same recovery.

But if you adopt the other conclusion, viz., that the defendant's statement of facts is true, the question which we have advised you to next consider is: Did the plaintiff accept the note subject to the condition that he would account for and pay over to Mr. Foster any sum he might recover in excess of the price he paid for it? That is, did he agree to pay Mr. Foster the difference between any amount recovered by him and the \$600 which he paid for the

note? As to this inquiry the testimony is uncontradicted, and furnished by Mr. Foster himself. Hence, we take it for granted you will find that there was such an agreement. In case you do so find, we say to you that under the law the plaintiff cannot recover more than the \$600, with lawful interest. Of course, you understand that this instruction is based upon the assumption that you believe the testimony of the defendant respecting the contract between himself and Mr. Foster. As we have already instructed you, if you do not believe this testimony your verdict should be in favor of the plaintiff for the full amount of his claim. If you adopt the former conclusion and find that there was an agreement between Mr. Foster and the plaintiff that the latter should not have, out of the sum recovered, more than the \$600, and that the remainder should belong to Mr. Foster, we instruct you that no more than \$600 and interest can be recovered in this suit. This is true because, as to the balance of the plaintiff's claim, he instituted, in legal effect, this action as trustee of Mr. Foster. Hence, to that extent the defendant has a right to avail himself of any defense in this trial that he could interpose if Mr. Foster were the plaintiff.

We now go to the consideration of the question of fact relating alone to the rights of the plaintiff. Heretofore we have been dealing with questions upon the solution of which the rights of Mr. Foster are dependent.

Now, did the plaintiff take the note subject to any rights in law or equity, you may find in the defendant to refuse payment of the same? In other words, if you find that the agreement concerning the purchase of the potatoes and the execution of the note was as stated by the defendant, does this conclusion, as matter of law, affect the rights of the plaintiff in this action? The answer to this question must be determined by your finding upon No. 3 issue of fact, to which we have already directed your attention, viz: 3. Did the plaintiff have knowledge of the transaction between Mr. Foster and the defendant, including the terms of the agreement, and the condition subject to which the note was given?

Any qualification or restriction of the liability undertaken by the maker of a negotiable instrument, if constituting a material part of the inducement which influenced him to make and deliver the instrument, will be enforced against the payee. But such a qualification

or restriction not set forth in the writing is not available to the maker in a contest with a bona fide purchaser of the instrument for value. The statute of this State, to which we have already referred, provides that an indorsee against whom the equities of the maker cannot be asserted is one (a) that became the holder of the note before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (b) that he took it in good faith and for value; (c) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Until it is proved that the title of the indorser from whom the holder purchased the note is defective, the latter is presumed to be a bona fide purchaser for value. The instant, however, defectiveness of the title of his indorser is established, the law demands of him affirmative proof of all the facts in the definition of a bona fide purchaser for value. If the agreement between Mr. Foster and the defendant were as described in the testimony of the defendant, the title of Mr. Foster was defective. Hence, if you find that it was thus defective, you must decide whether or not the proof submitted by the plaintiff in itself, and as affected by the testimony of the defense, convinces you, 1st. That the plaintiff purchased the note in suit before it was overdue, and without notice that it had been previously dishonored. 2nd. That the plaintiff, at the time he purchased the note, took it in good faith and for value, and, 3rd, That at the time it was negotiated to him the plaintiff had no notice of any infirmity in the note or defect in the title of Mr. Foster.

These questions present an issue of fact in the trial of which the burden is upon the plaintiff. In other words, the plaintiff cannot claim the protection provided a bona fide purchaser for value, without furnishing evidence in which there is full warrant for affirmative answers to all these questions. Respecting the first question, viz: Did the plaintiff purchase the note in suit before it was overdue, etc., it is conceded that the answer should be in the affirmative. He purchased the note previous to the date appointed for its payment, hence it was not overdue, and he could not have had notice that it had been dishonored. A note is said to be dishonored when, on due presentation at maturity, payment is refused. At the time the note in suit was negotiated to the plaintiff it was not yet payable, and, therefore, payment of it could not have been previously demanded.

Hence, we say to you that it is your duty to find that the note did not go into the hands of the plaintiff dishonored.

The next question to which we shall now proceed to direct your attention is this: Did the plaintiff have knowledge of the details of the transaction between the defendant and Mr. Foster? Of course, in this connection, you will recall our instruction that it is unnecessary to consider this question unless you are convinced that the defendant has told the truth concerning the agreement, especially in regard to the time the delivery of the potatoes was to be made, and the condition upon which he avers the note was given. If you do not find the defendant stated the truth, in this behalf, as we have already said to you, the plaintiff is entitled to recover the full amount of his claim. If you find otherwise, then you must take up and determine the inquiry: Did plaintiff have knowledge of this agreement? In case you conclude that the defendant correctly stated the agreement, the only ground upon which it can be held that the plaintiff was not bound by the agreement, is that available alone to a bona fide holder of a negotiable note. In other words, to escape the legal effect of the agreement he must make it appear to your satisfaction (a) that he purchased the note before the time appointed for its payment; (b) that he paid value for it, and (c) that he did not have knowledge of the terms of the agreement, affecting the title of Mr. Foster to the note, at the time it was transferred to him.

Of these conditions, the third renders it necessary to consider the question we are now submitting to you. If the plaintiff knew of any defect in the title of Mr. Foster when he took the note, constituting a valid defense in any action on the part of Mr. Foster to enforce its payment, he was not a bona fide holder. Did he, at that time, have such knowledge?

The defendant contends that the deceased plaintiff was present at the making of the agreement, and that his nearness to the parties furnishes full warrant for the inference that he heard all the details of the transaction. The plaintiff, in his testimony, says he did not hear the conversation of the parties relating to the agreement or any part of it; that while it was in progress, because of the commotion in the store, the distance between them and him, and the fact that he was engaged in conversation with a Mr. Greenleaf, now

dead, he could not have heard the talk if he had made an effort to hear it.

Thus, as you will notice, the real point for your consideration in this connection is, did the plaintiff hear what the parties said? He testified he did not hear. This is a positive statement, and unless you find the witness is unworthy of belief, you should accept this statement as true. Touching this matter we must assume that he knew the truth. If he heard, he knew it then, and it is reasonable to assume he knew it when he gave his testimony. It is equally manifest that if he did not hear, he knew it then and also at the time he testified. Hence, we again say to you that there is but one ground upon which you can justify refusal to be governed by his evidence, and that ground is, a conviction in your minds that he consciously gave false testimony. As to whether or not there are any facts or circumstances developed in the trial furnishing warrant for such a conviction, you are the sole judges. The conditions upon which jurors may, under the law, condemn the credibility of either party to this action exist in their relation to the trial, and in the contradictions in the testimony. They are equally interested in the verdict to be rendered by you. One is seeking to gain money, and the other is endeavoring to avoid being compelled to turn over his money to another. Probably the desire to escape the loss of money is just as likely to influence a man to testify falsely as is the desire to gain money. Hence, if interest were your only guide, in your effort to arrive at a conclusion as to whom, the plaintiff or defendant, you will believe, the difficulty confronting you would be almost insurmountable. But, in connection with this, there are other tests available to you.

How did each of the parties appear to you when testifying? Did both speak and act like men governed by the influence of an oath to tell the truth, the whole truth, and nothing but the truth? Like men in whom the sense of honor and the spirit of truth cannot be overthrown by suggestions of greed and selfishness, or did you observe a difference in this respect? Does the application of this test present to you one party in a more favorable light than it does the other? If it does, and there is nothing to the contrary in the evidence which outweighs the legitimate influence of it, you have the right to accept the testimony of the party who has thus favorably impressed you, and to reject that of the other party.

Some testimony appears in the case, on the part of the defendant, respecting the time when the note was transferred to Mr. Smith, and the circumstances attending the transaction. Of course, knowledge of facts affecting the rights of Mr. Foster, gained by the plaintiff at any time before he purchased the note, would, to that extent, deprive him of the protection accorded to an innocent purchaser of a negotiable instrument. But we do not think that the testimony, in this behalf, is sufficient to establish such knowledge in the plaintiff. The circumstances to which it relates were, alone, in the conduct of Mr. Foster, and it does not appear that the plaintiff knew of the interview between the witness Simpson and Mr. Foster, or of anything that was said in the interview. We, therefore, instruct you that the only evidence upon which you are at liberty to find the plaintiff had knowledge of any terms or conditions upon which the note was given, is that concerning the conversation at the time the agreement was made for the purchase of the potatoes, and his presence thereat.

Still, as to the contention of Mr. Foster and the defendant respecting the agreement, we believe it proper for you to consider the action of Mr. Foster on that occasion. If you find that the testimony of Mr. Simpson is true, was the conduct of Mr. Foster consistent with his allegation that there was no conditions in the agreement that relieved the defendant from his obligation to pay to him the note in question? In this behalf you have a right to inquire: Why did he immediately after Mr. Simpson's visit seek to negotiate the note? Was it because he was conscious of any agreement he had with the defendant that would render him unable to recover on the note in his own name, or did he do this, for the reason the plaintiff said he gave to him, viz., that he was embarrassed, because he was unprovided with means to pay an obligation he had undertaken to satisfy that day? This is a question to which you may give attention in your endeavor to ascertain the agreement between Foster and the defendant, and in passing upon the credibility of the testimony of Mr. Foster.

Finally, we say to you: First. If there was nothing in the agreement qualifying or limiting the obligation shown in the note, your verdict should be in favor of the plaintiff for one thousand dollars, with interest thereon from the 2nd day of May, 1901.

Second. If you find the agreement to be as described by the de-

fendant, but that the plaintiff did not have knowledge of it at the time the note was transferred to him, your verdict should be in favor of the plaintiff for six hundred dollars, with interest thereon from the 2nd day of May, 1901.

Third. If you find that the agreement was as stated by the defendant, and that the plaintiff knew of its terms and conditions at the time the note was transferred to him, your verdict should be in favor of the defendant.

Counsel for the parties have, respectively, requested us to charge you upon certain points.

Number one of plaintiff's points reads as follows:

"That, whatever may have been the agreement between Foster and the defendant, respecting the purchase of the potatoes, or the giving of the note in this case, if the plaintiff, at the time he purchased said note, had no knowledge of anything in either of said agreements, in any manner qualifying or limiting the promise of the defendant, as expressed in the note, the plaintiff is entitled to recover in this action."

In our general charge we have given you the instruction asked for in this point. The law is, undoubtedly, correctly stated in this proposition, and the point is, therefore, affirmed.

Number two of plaintiff's point is:

"That the testimony submitted on the part of the defendant to establish knowledge in the plaintiff of the terms and conditions in the agreement between Foster and the defendant, is incompetent to prove such knowledge in said plaintiff."

We refuse to charge you as requested in this point. In our opinion, the testimony presented on the part of the defence is sufficient to justify the submission of this question to you for determination. This point is, therefore, negatived.

Number three:

"That the testimony, in behalf of the defendant, regarding the circumstances attending and immediately preceding the purchase of the note by the plaintiff is incompetent to prove that he, the said plaintiff, then acquired knowledge of any terms or conditions in the agreement between Foster and the defendant qualifying or limiting the promise of the latter as expressed in said note."

In our general charge we have already instructed you that the evidence mentioned in this point is insufficient, as matter of law, to prove the plaintiff gained, at the time or immediately before he purchased the note, knowledge of any conditions in the agreement between Foster and the defendant modifying the promise contained in the note. That if you found any such knowledge in the plaintiff, you must do it alone upon the evidence respecting the transaction in which the defendant purchased the potatoes, and of the presence of the plaintiff at the same. This point is affirmed.

Number four :

“That, if the court rules that the evidence in this behalf is insufficient to prove said knowledge in the plaintiff, or, if the question of fact is submitted to the jury, and they find he did not, at any time before the purchase of the note, have such knowledge, the plaintiff is entitled to recover the full amount of the note and interest.”

We refuse to charge as requested in this point. If you find the agreement was as stated by the defendant, and that the plaintiff, of whatever he may recover in this case, is entitled to only six hundred dollars and interest, and the remainder, if any, belongs to Mr. Foster, we again instruct you, your verdict should be for not more than six hundred dollars. This point is negatived.

Defendant requests us to charge, first :

“That, if the jury find the defendant purchased the potatoes subject to the condition that they be delivered on the first day of May, 1901, and gave the note in this case, subject to the condition that if the potatoes were not delivered at the time appointed for delivery, the note should be returned to him, and of these, or either of these conditions the plaintiff, before or at the time he purchased the note had knowledge, the plaintiff is not entitled to recover in this case.”

In our general charge we have given you this instruction. The point is affirmed.

Second :

“That, if the jury find the terms and conditions of the agreement were as stated by the defendant, but are not convinced that the plaintiff had knowledge of the same at the time he purchased the

note, nevertheless the plaintiff is not entitled to a verdict for more than the sum of six hundred dollars and interest thereon." This point is also affirmed.

The verdict of the jury, of course, was received, announced and recorded by the court clerk, first, in the book called "Court Minutes," and then in the "Continuance Docket" in the prothonotary's office. It was in favor of plaintiff for the sum of \$671.40, or the amount paid by the plaintiff for the note, plus interest.

No exceptions having been entered to the charge of the judge, or his rulings on points, and no motion for a new trial having been made, the plaintiff, on the 29th day of May, 1903, paid the sheriff the jury fee of \$4.00, and on the same day the prothonotary, in obedience to praecipe of plaintiff's attorney, entered judgment upon the verdict, and the day following, judgment, debt, interest and costs, was paid by the executor of the will of the deceased defendant, and thereupon the same was satisfied of record.

## JUDGMENTS.

**Definition.** The determination, decision or sentence of a court or of a judge.

**Kinds.** As to the effect and origin of judgments there are many kinds. The purpose of this work, however, does not require the naming of more than four, viz., those founded upon verdicts, awards, confessions and taken by default.

**Verdict.** Is, as before stated, the decision of a jury of questions of fact. Four days after its rendition, and upon payment of four dollars to the sheriff, the party in favor of whom the verdict is found may cause judgment to be entered by delivering to the prothonotary a praecipe ordering entry of the same.

**Award.** Is the finding in favor of one party to a suit tried before one or more persons called arbitrators, and selected to act as such by agreement of the parties, or in the manner prescribed by statute. The statute gives the right to either party to compel arbitration of the case—the plaintiff after he has filed his declaration, and the defendant after he has filed his affidavit of defence. The exercise of this privilege involves the use of a praecipe and two rules. In the first rule, the party electing to have the trial before arbitrators, expresses his determination to arbitrate, and in the second rule, notice to the other party to the arbitration is furnished, the names of the arbitrators chosen, and the time and place appointed for the trial. Following are copies of said rules:

**Form of Praecipe Directing Issue of First Arbitration Rule.**

LUZERNE COUNTY, SS.:

JAMES MADISON

*vs.*

JAMES MONROE.

In the Court of Common Pleas of  
Luzerne County.

Of the term of October, 1906,  
No. 525.

And now, to wit, on the 20th day of  
November, 1906, the plaintiff enters  
a rule of reference, wherein he  
states his determination to have ar-  
bitrators chosen on the 6th day of  
December, 1906, at 10 o'clock in the  
forenoon, for hearing and deter-  
mining all matters at variance in the  
said suit between the parties.

WILLIAM HENRY HARRISON,  
*Attorney.*

**Form of First Arbitration Rule.**

LUZERNE COUNTY, SS.:

JAMES MADISON

*vs.*

JAMES MONROE.

In the Court of Common Pleas of  
Luzerne County.

Of the term of October, 1906,  
No. 525.

And now, to wit, on the 20th day of  
October, 1906, the plaintiff enters a  
rule of reference, wherein he states  
his determination to have arbitra-  
tors chosen on the 6th day of De-  
cember, 1906, at 10 o'clock in the  
forenoon, for hearing and determin-  
ing all matters at variance in the  
suit between the parties.

MARTIN VAN BUREN,  
*Prothonotary.*

**Form of Second Arbitration Rule.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA.

JAMES MONROE.	}	In the Court of Common Pleas of Luzerne County.
vs.		No. 525, October Term, A. D. 1906.
JAMES MADISON		I certify that, agreeable to the provisions of the Act of Assembly, approved June 16, 1836, "Regulating Arbitrations," James K. Polk, Andrew Jackson and John Quincy Adams were appointed arbitrators for the trial of all matters in variance in the above suit between the parties, who, or a majority of whom, are to make report thereon to the prothonotary of the said court, agreeably to the provisions of the Act of Assembly in such case made and provided. The said arbitrators to meet at the arbitration room in the Court House in Wilkes-Barre, on Tuesday, the 20th day of December, 1906, at 9 o'clock in the forenoon.

Certified from the records this 6th day of December, A. D. one thousand nine hundred and six.

WILLIAM H. HARRISON,  
*Prothonotary.*

The indorsement on First Arbitration Rule should be as follows :

No. 525.

October Term, 1906.

JAMES MONROE.

*vs.*

JAMES MADISON

FIRST RULE.

Filed 21st October, 1906.

Fee, \$1.25. Paid by Plaintiff.

Indorsement on Second Arbitration Rule should be as follows:

No. 525.

October Term, 1906.

JAMES MADISON

*vs.*

JAMES MONROE.

SECOND RULE AND AWARD.

WILLIAM HENRY HARRISON,

*Attorney.*

**What Day Must Be Appointed For Choosing Arbitrators.** A day not exceeding thirty days after the issue of the rule.

**When the First Rule Must be Served.** At least fifteen days before the time fixed in said rule for choosing arbitrators.

**How the Rule Must be Served.** It is the duty of the party, his agent or attorney, entering the rule to cause a certified copy of the rule to be served on the opposite party, his agent or attorney, by delivering such copy to the party personally, his agent or attorney, or, if the said party cannot be found, and has no agent or attorney, by leaving such copy at his last place of abode; and in the case of a corporation such copy must be served on the president, or other principal officer, cashier, secretary or chief clerk of the corporation.

**When the Time and Place of Trial Are Fixed.** At the time the arbitrators are chosen.

**How the Time and Place of the Trial Are Determined.** If possible, by agreement of the parties, if not possible, by the prothonotary.

**What Day Must Be Appointed For the Trial.** A day not less than ten nor more than twenty days after the appointment of arbitrators.

### **Number of Arbitrators, and How They Are Chosen.**

On the day fixed for the appointment of arbitrators, if both parties attend, either in person or by their agents or attorneys, the arbitrators shall be chosen in the following manner, viz.:

I. The number of the arbitrators, which shall be either three or five, shall be fixed by the parties, or if they cannot agree, by the prothonotary: *Provided*, That the parties may agree to refer the cause to any one person whom they shall concur in choosing.

II. If the number fixed be three, the plaintiff shall then nominate one person; if five, he shall nominate two, and if all, or either, be objected to by the defendant, he shall nominate other persons in place of those objected to, until he shall have nominated six persons for every person so allowed by him to be nominated.

III. The defendant shall then nominate in like manner an equal number of persons, subject in like manner to objection on the part of the plaintiff.

IV. If the parties agree in the choice of arbitrators, as aforesaid, the umpire shall be chosen as follows: The parties shall nominate alternately, beginning with the plaintiff, seven persons, the opposite party having the right to object to the nomination, and if all the persons thus nominated be objected to the prothonotary shall nominate a suitable and disinterested person; if he be objected to he shall name another, and so on until he shall name seven persons, and if all be objected to he shall make out a list of five such persons, and the parties shall then strike out alternately, beginning with the plaintiff, until the name of only one person be left, who shall be the umpire.

V. If the parties cannot agree in the choice of arbitrators, as aforesaid, the prothonotary shall make out a list containing the names of five suitable and disinterested persons for each of the number of arbitrators, so as aforesaid fixed upon, from which list the parties shall strike out alternately, beginning with the plaintiff, until the number be left which was so fixed, and the persons so selected shall be the arbitrators.

VI. If the parties agree as to one or more of the arbitrators, and differ as to one or more, the like proceedings shall be had to supply the deficiency and complete the number of arbitrators so fixed upon.

If only one of the parties attend on the day fixed for the appointment of the arbitrators, the proceedings shall be as follows:

I. If the party attending be the party by whom the rule of reference was entered, proof shall be made that the notice was duly served on the opposite party in the manner hereinbefore provided, and the proof of the service shall be the oath or affirmation of the person by whom it was made.

II. It shall be the duty of the prothonotary to fix the number of the arbitrators to nominate for the absent party, and to object to the nominations made by the party present, if he shall think it necessary.

III. If, in such case, all the persons nominated on either side shall be objected to, the like proceedings shall be had for the choice of arbitrators as if both parties were present, except that the duties required to be performed by the prothonotary in such case shall be performed by the recorder of deeds, the sheriff, coroner or treasurer of the proper county.

The day, hour and place of meeting of the arbitrators shall be fixed by the parties, if present and able to agree thereupon, but otherwise it shall be the duty of the prothonotary to determine the same: *Provided*, That in such case the day and meeting shall not be less than ten or more than twenty days after their appointment.

**When the Second Arbitration Rule Must Be Served.** Upon the opposite party and the arbitrators at least ten days before the time appointed for the trial.

**Method of Serving the Second Arbitration Rule.** A certified copy of the record, containing the names of the arbitrators and the time and place of meeting, must be served on each of the arbitrators, and also upon the opposite party, his agent or attorney; but if said party have no agent or attorney then it is lawful to serve said certified copy upon the opposite party, in the same manner as a writ of summons in a personal action was served on the 16th June, 1836. At this time a summons in a personal action was served by reading the same in the hearing of the defendant, or by giving him notice of its contents, and a true and attested copy thereof; or, if the defendant could not conveniently be found, by leaving such copy at his dwelling house, in the presence of one or more of the adult members of the family; or, if the defendant resides in the family of another, with one of the adult members of the family in which he resides. Service on corporation in the same manner provided for the service of first rule.

#### TRIAL BEFORE ARBITRATORS.

**Place and Time of the Trial.** Unless changed by agreement of the parties the trial must be had at the time and place designated in the second arbitration rule.

**Oath of Arbitrators.** Before the beginning of the trial the arbitrators must be sworn or affirmed, justly and equitably, to try all matters in controversy submitted to them.

#### **Form of the Award.**

After hearing the evidence and allegations of the parties the arbitrators are required to make out their award, which must be signed

by all of them, or a majority of them, and this award transmitted to the prothonotary within seven days after they have agreed upon the same. Following is an example of the form of the award:

JAMES MADISON	}	In the Court of Common Pleas of
vs.		Luzerne County.
JAMES MONROE.		No. 525, October Term, 1906.

And now, the 20th day of December, 1906, we, the arbitrators chosen in this case, under and in conformity to the Act of Assembly, approved the 16th day of June, 1836, P. L., 723, having met the parties, plaintiff and defendant, at the time and place duly appointed, to wit, in Wilkes-Barre, at the arbitration room of the Court House, this day at nine o'clock in the forenoon, and, after being duly sworn, having heard the proofs and allegations of the parties respectively, do award in favor of the plaintiff the sum of five hundred dollars.

JAMES K. POLK,  
ANDREW JACKSON,  
JOHN Q. ADAMS,

*Arbitrators.*

**Effect and Lien of the Award.** It has the effect of a judgment, with respect to the party against whom it is made, from the time of the entry thereof, and is a lien upon his real estate until reversed upon appeal or satisfied according to law.

**Appeal from the Award.** At any time within twenty days after the award has been entered in the prothonotary's office, either party has a right to appeal from it to the Court of Common Pleas. This right, however, is exercisable subject to certain conditions, viz, the appellant must make affidavit that the appeal is not taken for the purpose of delay, but because he firmly believes that injustice has been done, pay all the costs that may have accrued in the suit, and furnish bail for all the costs that may thereafter be incurred. The form of the affidavit, and that of the recognizance in which the bail is furnished, are as follows:

**Form of the Affidavit.**

LUZERNE COUNTY, SS.:

In Common Pleas of said County:

Of October Term, 1906. No. 525.

JAMES MADISON

-----Judgment.

Debt, \$1,000.00.

vs.

Enter an appeal from the award of  
arbitrators in this case on part of de-  
fendant.

JAMES MONROE.

TO HENRY WALSER, ESQ.,

*Prothonotary.*

James Monroe, being duly sworn according to law, deposes and says that it is not for the purpose of delay the appeal in this case is taken, but because he firmly believes that injustice has been done.

Sworn and subscribed before me this } JAMES MONROE.  
second day of January, 1907.

HENRY WALSER, *Prothonotary.*

**Form of the Recognizance.** The recognizance is connected with the affidavit in the same blank furnished by the prothonotary. Its form is as follows:

JAMES MONROE, tent in \$500.00. }  
JAMES G. BLAINE, tent in \$500.00. } Sub. Con.

That the above named James Monroe shall prosecute this, his appeal, with effect and without delay, and if he be cast therein he shall pay all costs that may be legally recovered against him, or in default thereof, that will do so for him.

Taken and acknowledged before me, }  
this 2nd day of January, 1907.

HENRY WALSER,

*Prothonotary.*

**Judgments Founded Upon Confessions.** In all agreements in writing, in which one of the parties thereto obligates himself to pay to the other party a certain sum of money, either at the end of a certain period of time or upon the happening of certain conditions, the obligor may confess judgment in favor of the obligee for the amount he undertakes to pay. This practice is most common in bonds, notes and in contracts for the sale of land. The purpose of the confession is to avoid the expense and delay the obligee otherwise might be subjected to in a law suit, and to give him the security furnished in the lien of a judgment entered in the Court of Common Pleas. To secure the entry of the judgment confessed, in this court it is only necessary to file the agreement in which the confession exists with the prothonotary, and by a praecipe direct him to enter judgment.

**Form of the Confession of Judgment.**

\$500.00.

Lewisburg, Pa., April 3, 1907.

One year after date I promise to pay to Philander Hemminway, or bearer, five hundred dollars, with interest and without defalcation, for value received. And I do hereby confess judgment for the aforesaid sum, with interest, costs of suit, with ten per cent. attorney fees, if collected by legal process, releasing all errors, waiving inquisition, confessing condemnation, and without stay of execution. And I do further waive all right to the benefits of the provisions of the Act of 9th of April, 1849, entitled "An act to exempt property to the value of three hundred dollars from levy and sale on execution and distress for rent."

HIRAM HOPEWELL (Seal).

Due April 3, 1908.

Of course, much of the verbiage in the note is unnecessary to the confession of judgment. Indeed, all after the word "suit" could be omitted without affecting the confession. The attorney fee is provided for in order to save the payee that expense in proceedings to collect the judgment. The waivers and releases are inserted to prevent delay in the collection of the same, and to deprive the drawer of the right to any stay of execution issued on the judgment, and of the right to the three hundred dollar exemption debtors are entitled to in this state, out of property on which execution is levied.

**Form of Praecipe Directing Entry of Judgment on Confession.**

SAM HUSTON	}	In the Court of Common Pleas
vs.		of Snyder County.
WILLIAM CURTIS.		No. 125, February Term, 1907.

TO BENJAMIN YOUNG, ESQ.,  
*Prothonotary.*

Enter judgment in this case pursuant to the tenor and effect of the bond hereto attached for the sum of five hundred dollars. Interest from first day of March, 1906.

GEORGE PEABODY,  
*Attorney for Plaintiff.*

**Judgments by Default.** Are judgments taken for want of appearance, and for want of an affidavit of defence.

If the plaintiff has, in the meantime, filed a declaration or statement of his cause of action, and the defendant has failed to enter his appearance on the day succeeding the day appointed for the sheriff to return the summons, he, the plaintiff, may cause judgment for his claim to be entered by delivering to the prothonotary a praecipe, of which the following is an example:

JAMES GARFIELD	}	In the Court of Common Pleas
vs.		of Luzerne County.
ROSCOE CONKLING.		No. 3, January Term, 1907.

U. S. GRANT, ESQ.,  
*Prothonotary.*

Enter judgment in favor of the plaintiff in the above entitled case, by default for want of appearance.

JAMES WILSON,  
*Attorney for Plaintiff.*

In all actions of assumpsit wherein the plaintiff has filed a statement and copy of his demand, as already stated, to avoid judgment being taken against him by default, defendant is required to enter an affidavit of defence at a time specified in the statute. If the defendant fails to comply with this requirement at the time designated in the

law referred to, the plaintiff may cause judgment to be entered either upon motion in court, or by a praecipe addressed to the prothonotary, of which said praecipe the following is an example :

BENJAMIN FRANKLIN	}	In the Court of Common Pleas
vs.		of Luzerne County.
JOHN HANCOCK.		No. 10, January Term, 1907.

PEYTON RANDOLPH, ESQ.,  
*Prothonotary.*

Enter judgment in favor of the plaintiff in above entitled case by default for want of an affidavit of defence.

FRANCIS MARION,  
*Attorney for Plaintiff.*

**Lien of Judgments.** Each of the judgments thus obtained, immediately upon its entry, becomes a lien against all real estate then owned by the defendant. In other words, it is a charge upon his land, from which it cannot be freed otherwise than by payment or by neglect on the part of the plaintiff to continue it in a proceeding provided by statute. Without such a proceeding the lien will not live longer than five years.

#### SCIRE FACIAS.

**Translation.** That you make known.

**Purposes for Which Writ of Scire Facias Is Used.** Within the scope of practice to which this work is limited the writ is used for the following purposes :

I. To continue and revive the lien of judgments the law of this State provides: "No judgment entered in any court of record shall continue a lien on the real estate of the person against whom such judgment may be entered during a longer period than five years, unless the person who may obtain such judgment, or his legal representatives or other persons interested, shall, within said term of five years, sue out a writ of scire facias to revive the same."

II. To reduce the debt in a mortgage to judgment in order that the mortgagee may, by an execution process, cause the land described in the mortgage to be sold by the sheriff to satisfy the principal and interest of the debt.

III. A mechanic's lien consists of a claim, filed in the prothonotary's office, for work and materials furnished in and about the construction of buildings. The scire facias is used in proceedings to reduce this claim to judgment. Upon the judgment the claimant or plaintiff may cause execution to issue against the land described in his claim.

IV. In cities, boroughs, etc., the people, in addition to the taxes they pay for the support of these local governments, may be required to furnish money to be used in paying for certain public improvements. After the amount charged to each property owner is ascertained, to insure its collection, a municipal lien is entered against his land. If he does not deliver the amount of money demanded of him at the time appointed scire facias may be issued on the lien to recover judgment for the same. On this judgment the land described in the lien may be sold under an execution. To enforce and secure the payment of taxes the same proceeding is provided.

**How Issue of Writ of Scire Facias Is Caused.** The prothonotary issues the writ in obedience to the praecipe of the plaintiff, the form of each praecipe being as follows:

**On Judgment.**

THEODORE TILTON	}	In the Court of Common Pleas of Luzerne County. No. 75, May Term, 1906.
vs.		
HENRY WARD BEECHER.		

GROVER CLEVELAND, ESQ.,  
*Prothonotary.*

Issue writ of scire facias to revive Judgment No. 60, May Term, 1901, and to continue the lien with notice to terre-tenants, if there be any, returnable at next term.

W. H. FULLERTON,  
*Attorney for Plaintiff.*

**On Mortgage.**

JEREMIAH BLACK	}	In the Court of Common Pleas of Luzerne County. No. 1234, June Term, 1906.
vs.		
ANDREW G. CURTIN.		

DAVID WILMONT, ESQ.,  
*Prothonotary.*

Issue writ of scire facias sur mortgage, given and executed by Andrew G. Curtin, dated the first day of August, A. D. 1901, recorded in the office for the recording of deeds, etc., for the County of Luzerne, in Mortgage Book, No. 75, page 61, etc., for default of payment thereof. Returnable at next term.

HENRY M. HOYT,  
*Attorney for Plaintiff.*

### On Mechanic's Lien.

EDMUND L. DANA	}	In the Court of Common Pleas
vs.		of Luzerne County.
LYMAN H. BENNETT.		No. 2562, October Term, 1906.

G. M. HARDING, ESQ.,  
*Prothonotary.*

Issue scire facias sur mechanic's lien, No. 10, Mechanic's Lien Docket, page 342.

EDWARD P. DARLING,  
*Attorney for Plaintiff.*

With the last above praecipe the plaintiff is required to file an affidavit, by himself, his agent or attorney, setting forth that he has caused inquiries to be made in the neighborhood of the property, of at least three of those residing upon or nearest thereto, whose names and residences are given and the dates of the inquiries stated, and that he believes the persons named by him in such affidavit are the real owners of said property.

Following is the form of the affidavit:

EDMUND L. DANA	}	In the Court of Common Pleas
vs.		of Luzerne County.
LYMAN H. BENNETT.		No. 2562, October Term, 1906.

LUZERNE COUNTY, SS.:

Edmund L. Dana, the above named plaintiff, being duly sworn, says that he did on the first day of October, 1906, cause inquiries to

be made of Horatio King, H. S. McFadden and John B. Floyd, residing, respectively, in the City of Wilkes-Barre, in said county, on North Meade Street, at Nos. 425, 427 and 428, and upon and nearest to the property described in mechanic's lien entered of record in the prothonotary's office of said county, in Mechanic's Lien Docket No. 10, page 342, and referred to in plaintiff's praecipe in this case, and that he believes Samuel Arnold, of the said city, and residing at No. 45 South Sherman Street, is the real owner of said property.

Sworn and subscribed before me this	}	EDMUND L. DANA.
second day of October, 1906.		
S. W. TRIMMER,		
<i>Prothonotary.</i>		

### On Municipal Lien.

CITY OF HARRISBURG	}	In the Court of Common Pleas
<i>vs.</i>		of Luzerne County.
OSCAR NICHOLSON.		No. 1645, December Term, 1906.

JOHN T. L. SAHM, ESQ.,  
*Prothonotary.*

Issue scire facias sur municipal lien No. 45, City Municipal Lien Docket, No. 12, to revive and continue the lien thereof. Returnable to next term.

CHARLES F. MCHUGH,  
*Attorney for Plaintiff.*

If no defense is made to the demand of the plaintiff in the writ judgment is entered to the number and term given in the continuance docket, and in the praecipe pursuant to which the writ was issued, both in the continuance docket and the judgment index. If the plaintiff's action is resisted the contention thus arising must be determined in the same manner as if the proceeding were in an action of assumpsit.

## WRITS ORDERED.

**Sur Judgment.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



Whereas, Theodore Tilton, heretofore in our County Court of Common Pleas of Luzerne County, to wit, in the term of May, 1901, before our judges at Wilkes-Barre, by the consideration of the same court recovered against Henry Ward Beecher, late of the said county, yeoman, as well a certain debt of three thousand dollars, like money which to our said plaintiff in our said court were adjudged for his damages, which he sustained by occasion of the detention of that debt, whereof the said defendant is convict, as by the record and proceeding thereupon in our said court, before our judges at Wilkes-Barre remaining, manifestly appears. Nevertheless, execution of the judgment aforesaid as yet remains to be done, as by the insinuation of the said Theodore Tilton we have received, and whereas, five years are nearly expired since the said judgment was obtained, and the lien on the real estate of the said Henry Ward Beecher would after that time be lost unless the said judgment was revived, we do, therefore, command you that by honest and lawful men of your bailiwick you make known to the said Henry Ward Beecher that he be and appear before our judges at Wilkes-Barre, at any County Court of Common Pleas, there to be held in and for the County of Luzerne, the first Monday of March next, to show if anything he knows or has to say why judgment recovered by the said Theodore Tilton against him, the said defendant, as aforesaid, ought not to be revived and continue a lien on his real estate during another period of five years, according to the act of general assembly in such case made and provided, if to us it shall seem expedient. And have you then and there the names of those by whom you shall make it known to and this writ.

Witness the Hon. John Lynch, President Judge of our said court at Wilkes-Barre, the first day of March, in the year of our Lord one thousand nine hundred and six.

GROVER CLEVELAND,

*Prothonotary.*

**Sur Mortgage.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



Whereas, in and by a certain indenture made the first day of August, A. D. one thousand nine hundred and one, and recorded the second day of August, A. D. 1901, in Mortgage Book, No. 145, page 132, between Jeremiah Black, of the County of Lackawanna, and Andrew G. Curtin, of the County of Lackawanna, reciting that whereas the said Andrew G. Curtin, in and by his certain obligation or writing obligatory, under his hand and seal duly executed, bearing even date therewith, stands bound unto the said Jeremiah Black in penal sum of ten thousand dollars, conditioned for the payment of five thousand dollars and fifty cents unto the said Jeremiah Black, together with the appurtenances, to have and to hold the same unto the said Jeremiah Black, his heirs and assigns, to his and their only proper use and behoof forever. And in and by the said indenture it was provided always, nevertheless, that if the said Andrew G. Curtin, his heirs, executors, administrators or assigns, should and did well and truly pay or cause to be paid unto the said Jeremiah Black, his executors, administrators or assigns, the aforesaid sum of five thousand dollars on the days and times thereinbefore mentioned and appointed for the payment thereof, together with the lawful interest therefor, without any fraud or any further delay, and without any deduction, defalcation or abatement to be made of anything for in respect of any taxes, charges or assessments whatsoever, then and from thenceforth as well as the said indenture and the estate thereby granted as the said recited obligation should ease, determine and become void, anything therein contained to the contrary in any wise notwithstanding.

And whereas, the said sum of five thousand dollars, with the interest thereof, as yet remains unpaid, as we have been given to understand, and the said Jeremiah Black praying that a fit remedy in this behalf may be provided, we command you, that by good and lawful men of your bailiwick, you make known to the said Andrew G. Curtin that he be and appear before our judges at Wilkes-Barre,

at our Court of Common Pleas for the County of Luzerne, there to be held on the first Monday of June next, to show if anything he knows or has to say why the said mortgaged premises, with the appurtenances, ought not to be taken in execution and sold to satisfy the debt and interest aforesaid, if to him it shall seem expedient. And have you then and there the names of those by whom you shall so make it known to and this writ.

Witness the Hon. John Lynch, President Judge of said court, of Wilkes-Barre, the first day of May, in the year of our Lord one thousand nine hundred and six.

HENRY M. HOYT,  
*Prothonotary.*

### Sur Mechanic's Lien.

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



Whereas, Edmund L. Dana had filed a claim in our County Court of Common Pleas for the County of Luzerne, against Lyman H. Bennett, owner, or reputed owner, for the sum of two thousand dollars for work and labor done and performed, and materials furnished to or in a certain structure, to wit: Three-storied brick building, 26 feet in width, 60 feet in depth and 26 feet high, and located on a lot or piece of ground situate in the Borough of Ashley, Luzerne County, Pennsylvania, bounded and described as follows: Beginning at the southeast corner of lot numbered forty-eight, on the north side of Wood Avenue, thence northerly at right angles to said Wood Avenue one hundred and fifty-eight feet, more or less, to a corner on the west side of Cook Street; thence southeasterly along the west side of said Cook Street sixty-eight feet, more or less, to a corner; thence southerly one hundred and fifteen feet, more or less, to corner on the north side of Wood Avenue; thence westerly along the north line of said Wood Avenue sixty-four feet to the place of beginning. Containing seven thousand and seven hundred and sixty-eight square feet of land, more or less, and being lot numbered forty-nine in Block "K," on plot of lots laid out in said borough by the Lehigh and Wilkes-Barre Coal Company, and whereas, it is alleged that the

said sum still remains due and unpaid to the said Edmund L. Dana, now we command you that you make known to the said Lyman H. Bennett that he be and appear before the judges of our said court, at a Court of Common Pleas to be held at Wilkes-Barre on the first Monday of November next, to show if anything he know or has to say why the said sum of two thousand dollars should not be levied of the said structure to the use of the said Edmund L. Dana, according to the form decree and effect of the act of assembly in such case made and provided, if to him it shall seem expedient. And have you then and there this writ.

Witness the Hon. John Lynch, President Judge of our said court, at Wilkes-Barre, the 29th day of September, in the year of our Lord one thousand nine hundred and six.

PAUL DASCH,  
*Prothonotary.*

### Sur Municipal Lien.

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To John Everready, Greeting:



Whereas, the City of Pittston, claimant, on the 10th day of January, A. D. 1904, filed its claim in our Court of Common Pleas of Luzerne County, of February Term, 1904, No. 2, M. L. D., against you as follows:

CITY OF PITSTON  
vs.  
JOHN EVERREADY.

}

Under and by virtue of an act of assembly, entitled "An act providing when, how, upon what property and to what extent

liens shall be allowed for taxes and for municipal improvements, and for the removal of nuisances," etc., approved June 4, 1901, and all other acts of assembly relating thereto, the City of Pittston files this its claim for \$150.00 against the hereinafter described property, with the improvements thereon, and sets forth the following specifications of claim: I. The name of the party claimant is the said City of Pittston. II. The name of the owner or reputed owner against whom this claim is filed is John Everready. III. The property against which said claim is filed is described as follows: All that certain lot or parcel of land situate in the Tenth Ward of the

said City of Pittston, bounded on the north by Main Street, on the east by land of Erie Coal Company and L. & W. V. R. R. Company, on the south by lands of Sam Patch, being known as No. 75 Plank Street, and having a frontage on said street of 80 feet, and depth of 150 feet, and on which are the following improvements: A three-story brick dwelling, house and wooden outbuildings. IV. The work for which this claim is filed was done under and by virtue of the several acts of assembly governing cities of the third class, to wit: Act of May 23, 1889, P. L., 277; Act of May 16, 1891, P. L., 75, and the several supplements to said acts, and an ordinance of the said City of Pittston, approved 26th January, 1897. V. The work in front of said property, against which this claim is filed, was completed on 29th November, 1905, as certified by the supervising commissioner, filed in the office of street commissioner. VI. The kind and character of the work for which this claim is filed is the laying of sidewalk on South Main Street, on the northwest side thereof, in front of the above described property.

All notices prescribed by law or ordinance were duly given to the above named owner by the mayor and street commissioner. The amount of the assessment for which this claim is filed is as follows: 750 square feet at 20 cents, equals \$150.00.

THE CITY OF PITTSTON,

BY GEO. F. O'BRIEN,  
*Solicitor.*

And whereas, we have been given to understand that said claim is still due and unpaid, and remains as a lien against said property.

Now, you are hereby notified to file your affidavit of defence to said claim, if defence you have thereto, in the office of the prothonotary of our said court within fifteen days after service of this writ upon you.

If no affidavit of defence be filed within said time, judgment may be entered against you for the whole of said claim, and the property described in the claim to be sold to recover the amount thereof.

Witness the Honorable H. A. Fuller, President Judge of our said court, the first day of September, A. D. 1907.

HENRY WALSER,  
*Prothonotary.*

Indorsement on writ of scire facias to revive and continue lien of judgment should be as follows:

No. 75.

May Term, 1906.

THEODORE TILTON

vs.

HENRY WARD BEECHER.

SCI. FACIAS TO REVIVE JUDGMENT.

To-----190

SHERIFF'S COSTS.

Docket Entry -----\$-----

Travel -----

Service -----

Copies -----

Total-----\$-----

Paid by Attorney.

JONATHAN R. DAVIS, *Sheriff.*W. H. FULLERTON, *Attorney.*

Indorsement on writ of scire facias sur mortgage should be as follows:

No. 1234.

June Term, 1906.

JEREMIAH BLACK

v's.

ANDREW G. CURTIN.

SCI. FA. SUR MORTGAGE.

To-----190

SHERIFF'S COSTS.

Docket Entry -----\$-----

Travel -----

Service -----

Copies -----

Total-----\$-----

Paid by H. M. HOYT, *Attorney for Plaintiff.*

WILLIAM PENN KIRKENDALL, *Sheriff.*

HENRY M. HOYT, *Attorney.*

Indorsement on writ of scire facias sur mechanic's lien should be as follows:

No. 2562.

October Term, 1906.

EDMUND L. DANA

U.S.

LYMAN H. BENNETT.

SCI. FA. SUR MECHANIC'S LIEN.

To\_\_\_\_\_19

SHERIFF'S COSTS.

Docket Entry -----\$-----

Travel \_\_\_\_\_

Service \_\_\_\_\_

Copies \_\_\_\_\_

Total\_\_\_\_\_ \$\_\_\_\_\_

Paid by EDWARD P. DARLING.

J. B. STARK, *Sheriff.*

EDWARD P. DARLING, *Attorney.*

Indorsement on writ of scire facias sur municipal lien should be as follows:

No. 1645.

December Term, 1906.

CITY OF HARRISBURG

*vs.*

OSCAR NICHOLSON.

SCI. FA. SUR MUNICIPAL LIEN.

To.....

CHARLES F. McHUGH, *Attorney.*

## EXECUTION.

**Definition.** Execution is a judicial writ issuing out of the court where the record is on which the writ is founded.

**How Issue of the Writ Is Caused.** By a praecipe addressed to the prothonotary.

**To Whom Writ Is Directed.** Those issued in courts of record are directed to the sheriff, and in very rare cases to the coroner.

**Name of Each Kind of Execution.** Fieri Facias, Levare Facias, Venditioni Exponas, Habere Facias Possessionem, Attachment-Execution, Capias Ad Satisfaciendum.

## FIERI FACIAS.

**Translation.** Cause to be made.

**Command in the Writ.** The sheriff is commanded to cause to be made, out of the goods or lands of the defendant, the amount of the plaintiff's judgment. In other words, the writ directs the seizure of either or both land and goods.

**When Sheriff May Sell Land Under a Fieri Facias.** When defendant in the writ waives inquisition.

**Inquisition.** Is an inquest for the purpose of ascertaining whether the rents and profits of the land will be sufficient to satisfy, within seven years, the judgment of the plaintiff. This question is determined by a jury of six men. If they find the rents and profits are sufficient for said purpose the time for payment of the judgment is extended seven years, upon condition, however, that the defendant pay annually to the plaintiff a certain amount designated by the jury. But if the jury find that the rents, etc., will not pay the judgment in seven years the plaintiff may cause a writ of venditioni exponas to be issued.

## VENDITIONI EXPONAS.

**Translation.** That you expose to sale.

**Command in the Writ.** By this writ the sheriff is directed to expose to sale the property therein described.

## LEVARI FACIAS.

**Translation.** That you cause to be levied.

**Use of the Writ.** It is the writ used for collecting specific charges upon land. Chiefly these charges are imposed in mortgages, mechanics' liens and municipal liens. No property of the defendant other than land can be sold by virtue of this writ.

## HABERE FACIAS POSSESSIONEM.

**Translation.** That you cause to take possession.

**Use of this Writ.** This writ is issued upon judgment recovered in an action of ejectment.

**Command in the Writ.** The sheriff is directed "that justly and without delay the aforesaid Stephen Clearweather (the plaintiff), his possession of and in the premises aforesaid, with the appurtenances, you cause to have, and how you shall have executed this writ make known to our judges."

## CAPIAS AD SATISFACIENDUM.

**Translation.** That you take (defendant) to make satisfaction.

**Use of this Writ.** May be used to collect judgments recovered in actions for fines and penalties, on promise to marry, for moneys collected by a public officer, for misconduct or neglect in office or in any professional employment, and in actions for tort.

**Command in the Writ.** The sheriff is directed to arrest the defendant and detain him in custody till he satisfy the judgment.

## ATTACHMENT-EXECUTION.

**Use of.** This writ is an execution process used to secure for the plaintiff in a judgment, stocks owned by the defendant, debts due

to him, deposits of money made by him, and goods and chattels pawned, pledged and demised by him.

**Against Whom Issued.** The writ is issued against the defendant in the judgment on which it is founded, and the person owing the debt to the defendant, holding his stock, with whom his money is deposited, or the goods and chattels are pawned, pledged or demised. The former is called, in this proceeding, defendant and the latter garnishee.

Following is the form of each praecipe used for each of the foregoing writs:

**For Fieri Facias.**

JAMES GARFIELD	}	In the Court of Common Pleas
vs.		of Luzerne County.
ROSCOE CONKLING.		No. 3, January Term, 1907.

U. S. GRANT, ESQ.,  
*Prothonotary.*

Issue writ of fieri facias in the above entitled case. Returnable at next term.

JAMES WILSON,  
*Attorney for Plaintiff.*

**For Venditioni Exponas.**

JAMES GARFIELD	}	In the Court of Common Pleas
vs.		of Luzerne County.
ROSCOE CONKLING.		No. 3, January Term, 1907.

U. S. GRANT, ESQ.,  
*Prothonotary.*

Issue writ of venditioni exponas in above entitled case. Returnable at next term.

JOHN WILSON,  
*Attorney for Plaintiff.*

**For Levari Facias.**

BENJAMIN FRANKLIN	}	In the Court of Common Pleas of Luzerne County. No. 10, January Term, 1906.
vs.		
JOHN HANCOCK.		

PEYTON RANDOLPH, ESQ.,  
*Prothonotary.*

Issue writ of levari facias in the above entitled case. Returnable at next term.

FRANCIS MARION,  
*Attorney for Plaintiff.*

**For Habere Facias Possessionem.**

BOSTON CORBETT	}	In the Court of Common Pleas of Lawrence County. No. 756, December Term, 1906.
vs.		
J. WILKES BOOTH.		

Issue habere facias possessionem. Returnable at next term.

JOHN A. DIX,  
*Attorney for Plaintiff.*

TO CASTLE THUNDER, ESQ.,  
*Prothonotary.*

Generally the plaintiff includes in this praecipe an order for a writ of fieri facias for the collection of costs.

**For Capias Ad Satisfaciendum.**

ANTHONY WAYNE	}	In the Court of Common Pleas of Luzerne County. No. 342, May Term, 1903.
vs.		
BENEDICT ARNOLD.		

NATHANIEL GREEN, ESQ.,  
*Prothonotary.*

Issue fieri facias with clause capias ad satisfaciendum in the above entitled case. Returnable at next term.

JOHN PAULDING,  
*Attorney for Plaintiff.*

**For Attachment-Execution.**

EDWARD GIBBON  
*vs.*  
 WILLIAM WERT,  
 and  
 DAVID HUME, and  
 R. B. SHERIDAN,  
*Garnishees.*

In the Court of Common Pleas  
 of Lehigh County.  
 No. 19, September Term, 1901.

JOHN PIERPONT,  
*Prothonotary.*

Issue attachment-execution against the defendant, and indorse the same with direction to the sheriff to attach, all and singular, the goods and chattels, rights and credits, moneys and property of the defendant, in whose hands the same may be, and specially in the hands of David Hume and R. B. Sheridan, and to summon them as garnishees. Returnable at next term.

DAVID PATRICK,  
*Attorney for Plaintiff.*

Following are the writs issued in obedience to above praecipis.

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



We command you that the goods and chattels, lands and tenements of Roscoe Conkling, late of your county, yeoman in your bailiwick, you cause to be levied, as well as a certain debt of two thousand dollars, which James Garfield, lately in your County Court of Common Pleas of Luzerne County, before our Judges at Wilkes-Barre, recovered against him as twenty dollars, which in our said court were adjudged for his damages, which he sustained by occasion of the detention of that debt. And have you these moneys before our judges at Wilkes-Barre, at our County Court of Common Pleas, there to be held for the County of Luzerne, on the first Monday of February next, to render the said plaintiff for his debt and damages afore-

said, whereof the said defendant is convict, as appears of record, etc., and have you then and there this writ.

Witness the Honorable John Lynch, President Judge of our said court at Wilkes-Barre aforesaid, the second day of January, A. D. one thousand nine hundred and seven.

U. S. GRANT,  
*Prothonotary.*

### Venditioni Exponas.

LUZERNE COUNTY, SS.:

#### THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



Whereas, by your writ of fieri facias bearing teste at Wilkes-Barre, the second day of January, 1907, we command you that of the goods and chattels, lands and tenements of Roscoe Conkling, late of your county, in your bailiwick, you cause to be levied as well a certain debt of five thousand dollars, which James Garfield, lately in our County Court of Common Pleas of Luzerne County, before our judges at Wilkes-Barre, recovered against him as twenty dollars, which in our said court were adjudged for his damages, which he sustained by occasion of the detention of that debt. And that you should have those moneys before our judges at Wilkes-Barre aforesaid, at our Court of Common Pleas, there to be held for the County of Luzerne, the first Monday of February then next, to render to the said plaintiff his debt and damages aforesaid, whereof the said defendant is convict, etc. At which day, before our judges at Wilkes-Barre aforesaid, you returned that by virtue of said writ to you directed you had seized and taken in execution (here the land upon which the fieri facias was levied is described), with the appurtenances, which said tract of land and premises remained in your hands unsold for want of buyers so that you could not have the moneys in said writ named, at the day and place therein contained, to render to the said plaintiff his debt and damages aforesaid, as by said writ you are commanded. And that the residue of the execution of the said writ appeared in a schedule thereunto annexed, by which schedule of inquisition it appears that the rents, issues and profits of the premises

are not of a clear yearly value, beyond all repairs, sufficient within the space of seven years, to satisfy the debt and damage in said writ mentioned.

Therefore, we command you that the said lot of land, with the appurtenances, by you so seized and taken, you expose to sale, and that you have that money before our judges at Wilkes-Barre aforesaid, at our County Court of Common Pleas, there to be held on the first Monday of April next, to render the said plaintiff his debt and damages aforesaid. And have you then and there this writ.

Witness the Hon. John Lynch, President Judge of our said court, the 15th day of February, A. D. one thousand nine hundred and seven.

U. S. GRANT,  
*Prothonotary.*

**Levari Facias.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



We command you, that without any other writ from us, of the lands and tenements which were of Edward M. Paxson, late of your county, to wit: Of a certain (here the land conveyed in the mortgage is described), together with the hereditaments and appurtenances, in your bailiwick, you cause to be levied as well a certain debt of two thousand dollars, with the lawful interest thereon from the second day of June, 1906, as also fifteen dollars like money for costs, which sum of two thousand dollars, with the interest and cost aforesaid, Daniel Agnew, lately in our County Court of Common Pleas, before our judges at Wilkes-Barre, by the consideration of the same court, recovered against the said Edward M. Paxson, of the said messuage, etc., with the appurtenances, to be levied by the default of the said Edward M. Paxson, in not paying the said sum of two thousand dollars, with the lawful interest thereof, at the day and time when the same ought to have been paid, according to the form and effect of the act of assembly of the State of Pennsylvania, in such case made and provided; and have you those moneys before our judges at Wilkes-Barre, at our County Court of Common Pleas, there to be held the second Monday of March next, to render unto the said

Daniel Agnew for debt, interest and damages aforesaid, whereof the said defendant is convict, as appears of record, etc., etc. And have you then and there this writ.

Witness the Honorable John Lynch, President Judge of our said court, at Wilkes-Barre aforesaid, the 15th day of January, A. D. one thousand nine hundred and seven.

JAMES MONROE,  
*Prothonotary.*

**Habere Facias Possessionem.**

LAWRENCE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



Whereas, Boston Corbett, lately, that is to say, in the Term of December, 1906, No. 756, in our County Court of Common Pleas of the County of Lawrence, before our judges at New Castle, recovered against J.

Wilkes Booth, late of your county, a certain tract of land, to wit: (Here the land is described.)

Therefore we command you, that justly and without delay, the aforesaid plaintiff, Boston Corbett, possession of and in the tenements and premises aforesaid, with the appurtenances, you cause to have, etc.

And we also command you, that of the goods and chattels, lands and tenements of the said defendant in your bailiwick, you cause to be levied the sum of twenty-five dollars, which to the said plaintiff, in our said court, were adjudged for his damages, which he sustained by occasion of the trespass and ejectment aforesaid. And have you these moneys before our said court, to be held at New Castle, for the County of Lawrence, on the first Monday of February next, to render to the said plaintiff his damages aforesaid, whereof the said defendant is convict, etc. And have you then and there this writ, and how you shall have executed the same, make known to the judges of our court.

Witness the Honorable Peleg Gibson, President Judge of our said court, at New Castle, this 31st day of December, one thousand nine hundred and seven.

CASTLE THUNDER,  
*Prothonotary.*

**Capias Ad Satisfaciendum.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



We command you, that the goods and chattels, lands and tenements of Benedict Arnold, late of your county, yeoman in your bailiwick, you cause to be levied as well as a certain debt of ten thousand dollars, which Anthony Wayne, lately in your County Court of Common Pleas of Luzerne County, before our judges at Wilkes-Barre, recovered against him as fifty dollars, which in our court were adjudged for damages, which Anthony Wayne sustained by occasion of the detention of that debt. And have you these moneys before our judges at Wilkes-Barre, at our County Court of Common Pleas, there to be held for the County of Luzerne, on the first Monday of June next, to render to the said plaintiff for his debt and damage aforesaid, whereof the said defendant is convict, as appears of record, etc., and if you cannot cause the said moneys to be levied as aforesaid, then we command you that you have the body of said Benedict Arnold before our said judges of our court, there to be held the day and year aforesaid, and have you then and there this writ.

Witness the Honorable John Lynch, President Judge of said court, at Wilkes-Barre, the first day of February, in the year of our Lord one thousand nine hundred and four.

NATHANIEL GREEN,  
*Prothonotary.*

**Attachment-Execution.**

LUZERNE COUNTY, SS.:

THE COMMONWEALTH OF PENNSYLVANIA:

To the Sheriff of said County, Greeting:



We command you, that you levy and attach the goods and chattels, debts and money of William Wert, late of your county, in satisfaction of a certain judgment obtained at our Court of Common Pleas of said county, at the said suit of Edward Gibbon against the said William Wert, to September Term, 1901, No. 19, for the sum of five hun-

dred dollars, with interest from the 15th day of September, 1901, and costs. And also by honest and lawful men of your bailiwick you make known to the said William Wert, and to Daniel Hume and R. B. Sheridan, late of your county, that they be and appear before our said court at Wilkes-Barre, the first day of March next, to show if anything they have to say why the said judgment, besides cost of suit, should not be levied of the effects of the said William Wert, in the hands of the said David Hume and R. B. Sheridan, and have you then and there this writ.

Witness the Honorable John Lynch, President Judge of our said court, at Wilkes-Barre, the 10th day of January, A. D. one thousand nine hundred and six.

JOHN PIERPONT,  
*Prothonotary.*

Indorsement on writ of fieri facias should be as follows:

No. 3.

January Term, 1907.

JAMES GARFIELD

*vs.*

ROSCOE CONKLING.

FI. FA.

RETURNABLE TO

-----Term, 19

Debt Penal -----\$-----

Debt Real -----

Attorney's Commission -----

Prothonotary -----

Commission -----

Attorney -----

Orphans' Court -----

Sheriff -----

Arbitrators -----

Interest -----

No. -----

19-----

Indorsement on writ of venditioni exponas should be as follows :

No. 3.

January Term, 1907.

JAMES GARFIELD

v's.

ROSCOE CONKLING.

R. E. VEND. EX.

RETURNABLE TO

-----Term, 19

Debt ----- \$-----

Prothonotary -----

Commission -----

Attorney -----

Sheriff -----

Arbitrators -----

Orphans' Court -----

Interest -----

No. ----- 19----

Indorsement on writ of levari facias should be as follows :

No. 10.	January Term, 1907.
BENJAMIN FRANKLIN	
vs.	
JOHN HANCOCK.	
LEVARI FACIAS SUR MORTGAGE.	
RETURNABLE TO	
----- Term, 190--.	
Debt	-----\$-----
Prothonotary	-----
Commission	-----
Attorney	-----
Sheriff	-----
Arbitrators	-----
Orphans' Court	-----
Interest	-----
FRANCIS MARION, <i>Attorney.</i>	
No. -----	Term, 190--.

Indorsement on habere facias possessionem should be as follows:

No. 756.

December Term, 1906.

BOSTON CORBETT

*vs.*

J. WILKES BOOTH.

HAB. FA.

RETURNABLE TO

----- Term, 190\_\_.

Debt-----Land.

Prothonotary ----- \$-----

Commission -----

Attorney -----

JOHN A. DIX, *Attorney.*

No. -----

190\_\_.

Indorsement on writ of fieri facias with clause capias ad satisfaciendum should be as follows:

No. 342.	May Term, 1903.
ANTHONY WAYNE	
vs.	
BENEDICT ARNOLD.	
FI. FA. CL. CA. SA.	
RETURNABLE TO	
----- Term, 190---	
Debt Penal -----	\$-----
Debt Real -----	-----
Attorney's Commission -----	-----
Prothonotary -----	-----
Commission -----	-----
Attorney -----	-----
Orphans' Court -----	-----
Sheriff -----	-----
Arbitrators -----	-----
Interest -----	-----
NATHANIEL GREEN, <i>Attorney.</i>	
No. -----	Term, 190---

Indorsement on writ of attachment-execution should be as follows :

No. 19.

September Term, 1891.

EDWARD GIBBON

*vs.*

WILLIAM WERT.

ATTACHMENT-EXECUTION.

To-----Term, 189---

SHERIFF'S COSTS.

Docket Entry -----\$-----

Travel -----

Service -----

Copies -----

\$-----

Paid by Plaintiff's Attorney.

JOHN BROWN, *Sheriff.*

JOHN SMITH, *Attorney.*

## RECORDER OF DEEDS.

The journey is finished in the case begun in the Court of Common Pleas, in which the plaintiff has availed himself of all the methods provided for the commencement of an action, trial of the issue involved therein, the obtainment of judgment, the preservation of the lien of the judgment, and for the collection of the same. In one proceeding heretofore given it is already shown that the recorder's office is so connected with the prothonotary's office and the Court of Common Pleas, that the lawyer and the one who undertakes, as a stenographer, to serve him in his practice in said court, should have knowledge of its organization, records, etc. Further information in this behalf will greatly emphasize appreciation of the need of this knowledge.

The statute, in which the office was created, gives to it the name, "the office for recording deeds," and to the person elected or appointed to exercise its powers and perform its duties, "recorder." Deeds, however, are not the only instruments that may be recorded in this office. Besides deeds the law authorizes the recording of the following papers :

Mortgages, patents granted by the Commonwealth, release or any instrument, being evidence of the payment or satisfaction of a legacy charged upon lands ; release or other instrument given to any executor, administrator, assignee, trustee or guardian ; release or other instrument, being evidence of the payment or release of any legacy or recognizance charged upon lands ; receipt for taxes on unseated lands, letters of attorney, soldier's discharge, plots of land, assignments of mortgages, charters of corporations, commissions, limited partnership certificates.

In order that the nature and form of each of these instruments may be understood, we give, first, a definition of each, and, second, a copy of each.

**Deed.** Is a writing on parchment or paper, in which one person conveys to another his estate or interest in land. In other words, it

is a writing which evidences the transfer of one's ownership of land, or interest therein, to another. The party who makes the transfer is called "grantor," and the one to whom the estate or interest is transferred is called "grantee."

**Patent from the Commonwealth.** A conveyance by the State of a portion of the public lands.

**Mortgage.** This is an instrument used to secure to one person from another the payment of a debt, by vesting in the former some property or interest of the latter, subject to a right in him to redeem or buy it back by paying the debt within a certain period of time. The maker or debtor in the mortgage is called "mortgagor," and the person to whom the payment is secured, "mortgagee." The mortgage is generally accompanied by a bond, in which the maker is called "obligor," and the payee "obligee."

**Release of Legacy.** Is a paper discharging the person, through or by whom the legacy is payable, from liability on account of the same. In other words, the person to whom it is payable, called "legatee," confesses in this paper that it has been paid, or in some other manner satisfied. A legacy is a gift of personal property by will.

**Release of Executor, Administrator, Assignee, Trustee or Guardian.** This release discharges the representatives named from all liability on account of any moneys received by them, or acts performed in the execution of their powers and duties. Of course, it is executed by the person whose rights and interest they have authority to administer and protect. An executor is the person to whom the execution of a will of personal estate is confided by the maker of the will, called "testator." Administrator is a person to whom letters of administration, authorizing him to administer the estate of a deceased person, have been granted by the register of wills, who occupies an office connected with the Orphans' Court. Assignee is a person to whom property, real, personal or mixed, has been assigned, either for his own benefit or the benefit of others. Trustee is one who holds property upon trust, or for the benefit of others. Guardian is the person having the right and duty of protecting the person, property or rights of some one who is supposed to be incapable of managing his own affairs, such as an infant.

**Assignment of Mortgage.** Is a writing in which the mortgagee assigns to another all his right, title and interest in and to the mortgage.

**Plot of Land.** Consists of a map or drawing showing the boundaries and location of the land it embraces.

**Soldier's Discharge.** Is a certificate to a soldier discharging him from the military service of the United States Government.

**Charter of Corporation.** This is a writing in which the State grants to a certain number of individuals the right to combine in a business undertaking, or benevolent, social, religious, etc., enterprise, in the name of a corporation, without being personally responsible for debts or any other liabilities incurred in the prosecution of said business, or in the management of said enterprise.

**Commission.** Certificate of the appointment of a public officer. In some cases the right to the office is secured through election by the people, and in others by appointment alone. The commission is issued by the Governor of the Commonwealth.

**Limited Partnership.** In this State is an association of individuals for the purpose of carrying on certain business operations. This association differs from a general partnership in that the liability of the members, personally for debts is restricted to the amount of capital contributed by each.

**Letter of Attorney.** Is a writing by one person authorizing another to do any lawful act in his stead, as to sell and convey his land, make all kinds of contracts, etc., in his name, and by which he is bound in the same manner as if he had performed the acts himself.

Before most of the foregoing instruments can be recorded their execution and delivery must be acknowledged or probated. This acknowledgment is a declaration in writing, of the maker of an instrument, before a court or public officer authorized by statute to take acknowledgments, that said instrument is his act and deed.

STATE OF PENNSYLVANIA, }  
COUNTY OF SUSQUEHANNA. } SS.:

Witness my hand and official seal the day and year aforesaid.

The form of the acknowledgment of a corporation is prescribed by statute, and of which the following is a copy:

STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE. } SS. :

Witness my hand and notarial seal the day and year aforesaid.

(N. P. Seal.)

My commission expires January 3, 1909.

In the deed, of which the foregoing is an acknowledgment, I. O. Mandeville is constituted and appointed attorney to make acknowledgment of the deed.

A probate is proof of the execution and delivery of an instrument by witnesses, if any there be living who were present at the execution of the writing, and if such witnesses are dead or cannot be found, by persons who are acquainted with the maker's handwriting.

Following is the form of a certificate of probate :

STATE OF PENNSYLVANIA, }  
COUNTY OF LANCASTER. } ss.:

Be it remembered that on the seventh day of January, A. D. 1906, before me, the subscriber, one of the justices of the peace in and for the said county, personally came William J. Bryan and Winfield S. Hancock, of the City of Lancaster, in said county, subscribing witnesses to the execution of the above indenture, and being duly sworn according to law doth depose and say that they did see Samuel J. Tilden, the grantor above named, sign and seal, and as his act and deed, deliver the above indenture, deed or conveyance for the use and purposes therein mentioned, and that the names of these deponents thereunto set and subscribed as witnesses, are of the deponents' own proper handwriting.

Sworn and subscribed the day and year aforesaid before me.

Witness my hand and official seal.

(Seal.)

HORATIO SEYMOUR,

*Justice of the Peace.*

### **Deed.**

This indenture, made the tenth day of November, in the year of our Lord one thousand nine hundred and six, between Henry Knox, of the City of Chester, Chester County, Pennsylvania, party of the first part, and John Jay, of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, his heirs and assigns, all that certain lot of land situated in the City of Chester, Chester County, Pennsylvania, bounded and described as follows, viz.: Beginning at a corner of lot sold to John Jay in line of land of the heirs of Edmund Randolph, deceased; thence along said line north thirty degrees west one hundred and seven and five-tenths feet to a corner; thence along the line of lot No. 230, plot of lots surveyed and laid out by George Washington,

and recorded in the office for recording deeds, etc., in and for the County of Chester, in Map Book No. 5, page 342; south sixty degrees west twenty-five feet to a corner of lot No. 229, in said plot of lots; thence along said line south thirty degrees east one hundred and seven and five-tenths feet to Main Street; thence along said street north sixty degrees east twenty-five feet to the place of beginning, containing two thousand six hundred and eighty-seven square feet of land, more or less, and being lot No. 227 in said plot of lots, and the same lot conveyed by Alexander Hamilton to the said Henry Knox, through deed bearing date first day of July.

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges and appurtenances to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; and, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances. To have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said Henry Knox, his heirs and executors and administrators, doth, by these presents, covenant, grant and agree to and with the said party of the second part, his heirs and assigns forever, that he, the said Henry Knox, his heirs, all and singular, the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said Henry Knox, his heirs, and against all and every other person or persons, whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

In witness whereof the said party of the first part to these presents hereunto sets his hand and seal. Dated the day and year first above written.

Signed, sealed and delivered  
in the presence of  
ROBERT R. LIVINGSTONE,  
THOMAS JEFFERSON.

} HENRY KNOX (Seal).

**Mortgage.**

This indenture, made the second day of June, in the year of our Lord one thousand nine hundred and six, between Edward M. Paxson, of the City of Reading, Berks County, Pennsylvania, party of the first part, and Daniel Agnew, of the same place, party of the second part. Whereas, the said Edward M. Paxson, in and by his obligation or writing obligatory, under his hand and seal duly executed, bearing even date herewith, stands bound unto the said Daniel Agnew in the sum of five thousand dollars, lawful money of the United States of America, conditioned for the payment of the just sum of five thousand dollars, lawful money as aforesaid, in three years from the date thereof.

Together with interest thereon, payable annually, at the rate of six per cent. per annum; and also all premiums paid by the said Daniel Agnew, his executors, administrators or assigns, for maintaining an insurance against loss or damage by fire, to an amount not exceeding two thousand dollars, upon the premises hereinafter described, without any fraud or further delay. Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest for the space of thirty days after the same shall fall due, or in the payment of any premium of insurance as aforesaid, then, and in such case, the whole principal debt aforesaid shall, at the option of the said Daniel Agnew, his executors, administrators or assigns, become due and payable immediately, and payment of said principal, and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding. And provided further, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default in payment, either of said principal sum at maturity or of said interest, or of premiums of insurance within the time specified, a writ of fieri facias is properly issued upon the judgment obtained upon the obligation, or by virtue of said warrant of attorney, or a writ of scire facias is properly issued upon this indenture of mortgage, an attorney's commission for collection, viz., five per cent., shall be payable and shall be recovered, in addition to all principal, interest and premiums of insurance then due, besides costs of suit, as in and by the said recited obligation and the condition thereof, relation being thereunto had may more fully and at large appear.

Now this indenture witnesseth, that the said Edward M. Pax-

son, as well for and in consideration of the aforesaid debt or just sum of two thousand dollars, and for the better securing the payment of the same, with interest, unto the said Daniel Agnew, his executors, administrators and assigns, in discharge of the said recited obligation, as for in consideration of the further sum of one dollar, unto him in hand well and truly paid by the said Daniel Agnew, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release and confirm unto the said Daniel Agnew, his heirs and assigns, all that certain lot of land (complete description same as in the deed).

Together with all and singular, ways, waters, water-courses, rights, liberties, privileges, improvements, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, to have and to hold the said lot of land, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said David Agnew, his heirs and assigns, to and for the only proper use and behoof of the said Daniel Agnew, his heirs and assigns forever.

Provided always, nevertheless, that if the said Edward M. Paxson, his heirs, executors, administrators or assigns, do and shall well and truly pay, or cause to be paid, unto the said Daniel Agnew, his executors, administrators or assigns, the aforesaid debt or just sum of two thousand dollars, on the day and time hereinbefore mentioned and appointed for payment of the same, together with interest and premium of insurance as aforesaid, without any fraud or further delay, and without any deduction, defalcation or abatement to be made of anything, for or in respect of any charges or assessments whatsoever, that then, and from henceforth, as well this present indenture and the estate hereby granted as the said recited obligation, shall cease, determine and become void, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

Provided further, in case of default in the payment of interest as aforesaid, or in the payment of any premium of insurance as aforesaid, that thereupon it shall be lawful for the said Daniel Agnew, his executors, administrators or assigns, to sue out forthwith a writ of scire facias upon this present indenture of mortgage, and to proceed

at once thereon to recover the principal moneys hereby secured, and all interest or premiums of insurance due thereon, together with an attorney's commission for collection, viz., five per cent., besides costs of suit, without further stay, any law or usage to the contrary notwithstanding.

In witness whereof the said party of the first part to these presents hath hereunto set his hand and seal. Dated the day and year first above written.

Sealed and delivered in the presence of	}	EDWARD M. PAXSON (Seal).
WARREN J. WOODWARD,		
ULYSSES MERCUR.		

Following is the bond referred to in the mortgage:

Know All Men By These Presents, That Edward M. Paxson, of the City of Reading, Berks County, Pennsylvania, held and firmly bound unto Daniel Agnew, of the same place, in the sum of four thousand dollars, lawful money of the United States of America, to be paid to the said Daniel Agnew, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal. Dated the second day of June, in the year of our Lord one thousand nine hundred and six.

The condition of this obligation is such that if the above bounden Edward M. Paxson, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above named Daniel Agnew, his certain attorney, executors, administrators or assigns, the just sum of two thousand dollars lawful money as aforesaid, in three years from the date hereof, together with interest thereon, payable annually, at the rate of six per cent. per annum, and also all premiums paid by the said Daniel Agnew, his executors, administrators or assigns, for maintaining an insurance against loss or damage by fire, to the amount of at least two thousand dollars, upon the premises described in the accompanying indenture of mortgage, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue. Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest for

the space of thirty days after the same shall fall due, or in the payment of any premium of insurance as aforesaid, then, and in such case, the whole principal debt aforesaid and interest shall, at the option of the said Daniel Agnew, his executors, administrators or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding. And provided further, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default in payment, either of said principal sum at maturity, or of said interest, or of said premiums of insurance, a writ of fieri facias is properly issued upon the judgment obtained upon this obligation, or a writ of scire facias is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz., five per cent., shall be payable, and shall be recovered in addition to all principal, interest and premiums of insurance then due, besides costs of suit.

And further, I do hereby confess judgment for two thousand dollars, with interest, costs of suit, including five per cent. commission, and authorize the prothonotary of Luzerne County, or the prothonotary of any other county of this Commonwealth, to enter judgment of record against me for such sum, with a release of all errors, waiving right of inquisition on real estate, and all rights under any laws exempting real or personal property from levy and sale on execution.

Sealed and delivered in the presence of	}	EDWARD M. PAXSON (Seal).
WARREN J. WOODWARD, ULYSSES MERCUR.		

### Patent.

To All To Whom These Presents Shall Come, Greeting. Know you, that in consideration of the money paid by John Tims, at the granting of the warrant hereinafter mentioned, and of the sum of twenty-three dollars and five cents, in full of arrearages and fees now paid by Rebecca S. Harper into the treasury office of this Commonwealth, there is granted by the said Commonwealth unto the said Rebecca S. Harper a certain tract of land, situate in Foster Township, Luzerne County. Beginning at a black oak, thence by land of John Brown north eight and one-half degrees east four hundred and one perches to a white oak; thence by land of John Barts and others

south seventy-five degrees east ninety perches to a hemlock ; thence north eighty degrees east ninety-five perches to a stone ; thence south seventy-five degrees east forty-nine and one-half perches to a stone ; thence south sixty-five degrees east forty-five perches to an elm ; thence south forty-five degrees east twenty-five perches to a stone ; thence by land of Margaret and Philip Shrader ; thence south forty degrees west two hundred and seventy-two perches to a chestnut ; thence south ten degrees west ninety and one-half perches to a stone, and thence south seventy-five degrees west one hundred and sixty perches to the beginning. Containing four hundred and thirty-four acres and one hundred perches, and allowances, and which said tract was surveyed in pursuance of a warrant dated the 9th day of September, A. D. 1794, granted to the said Tims, whose right in and to the same has since become vested in the said Rebecca S. Harper.

To have and to hold the said tract or parcel of land, with the appurtenances, unto the said Rebecca S. Harper, and her heirs, to the use of her, the said Rebecca S. Harper, her heirs and assigns forever, free and clear of all restrictions and reservations, mines, royalties, quit-rents or otherwise ; excepting and reserving only the fifth part of all gold and silver ore for the use of the Commonwealth, to be delivered at the pit's mouth clear of all charges.

In testimony whereof, John W. Geary, Governor of the said Commonwealth, hath hereunto set his hand, and the seal of the office of surveyor-general of Pennsylvania hath been hereunto affixed the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the Commonwealth the ninety-sixth.

### **Release of Legacy Charged on Land.**

Know All Men By These Presents, That I, Galusha A. Grow, of the Borough of Towanda, Bradford County, Pennsylvania, have this day received of Benjamin F. Peck, of the same place, the sum of ten thousand dollars, being the full amount of a legacy, and the interest due thereon, bequeathed to me by my father, Henry Grow, late of the Borough of Troy, in the said county, deceased, in and by his last will and testament, dated the fourth day of August, 1894, and since his decease, to wit, on the eighth day of May, 1900, duly proved and now remaining of record in the office of the register of wills of the said county, and which legacy was by the said will charged upon a certain tract of land (describing the land here as in the deed)

therein and thereby devised unto the said Benjamin F. Peck. And in consideration of said payment I do hereby release and forever discharge as well the said Benjamin F. Peck, as also the said lands so as aforesaid devised to him of and from all liability, claim or demand, charge or lien on account, or by reason of the said legacy.

Witness my hand and seal this twenty-first day of October, 1901.

Sealed and delivered in the presence of	}	GALUSHA A. GROW (Seal).
PASCAL C. J. DEANGELES, W. A. PECK.		

### **Release to Executor by Legatee.**

Know All Men By These Presents, That James Mather, of the City of Carbondale, Lackawanna County, Pennsylvania, and Olive, his wife, late Olive Olmstead, one of the daughters and legatees named in the will of Anson Olmstead, late of the said City of Carbondale, deceased, do hereby acknowledge that they have this day had and received of and from Edward Walker, executor of the last will and testament of the said Anson Olmstead, deceased, the sum of five hundred dollars, in full satisfaction and payment of all such sum or sums of money, legacies, bequests as are given and bequeathed to the said Olive, by the last will and testament aforesaid, and all interest accrued thereon.

And, therefore, the said James Mather and Olive, his wife, do, by these presents, remise, release, quit-claim and forever discharge the said Edward Walker, his heirs, executors and administrators, of and from the said legacy or legacies, and of and from all actions, suits, payments, accounts, reckonings, claims and demands whatsoever, for or by reason thereof, or of any other act, matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In witness whereof we have hereunto set our hands and seals, this third day of February, A. D. 1906.

JAMES MATHER (Seal).

OLIVE MATHER (Seal).

### **Release of Guardian by Ward.**

Know All Men By These Presents, That I, George Shareswood, of the City of Franklin, Venango County, Pennsylvania, having at-

tained the age of twenty-one years, do hereby acknowledge that I, this day, have had and received of and from Isaac F. Gordon, my guardian, duly appointed by the Orphans' Court of the said County of Venango, the sum of one thousand dollars, together with the bond to him given by Henry W. Williams, and his sureties, agreeably to the order of the said court, in full satisfaction and payment of my share of the estate, real and personal, of my late father, David Shareswood, deceased.

And, therefore, I do, by these presents, remise, release, quit-claim and forever discharge the said Isaac F. Gordon, his heirs, executors and administrators, of and from the said guardianship, and of and from all actions, suits, payments, accounts, reckonings, claims and demands whatsoever, for and by reason thereof, or of any other act, matter, cause or thing whatsoever, from the beginning of the world to the day of the date hereof.

In witness whereof I have hereunto set my hand and seal this twenty-third day of May, A. D. 1906.

GEORGE SHARESWOOD (Seal).

### **Commission to Alderman.**

In the name and by authority of the Commonwealth of Pennsylvania, Executive Department. To all whom these presents shall come, Greeting :

Whereas, It appears by the returns made and transmitted to me according to law, that Michael E. Gaughan, of the County of Luzerne, has been elected an alderman of the Second Ward of the City of Wilkes-Barre, in the county aforesaid.

Therefore, know ye, that in conformity to the provisions of the constitution and laws of the said Commonwealth, in such case made and provided, I do, by these presents, commission him to be an alderman in and for the said ward of said city. Hereby giving and granting unto him full right and title to have and to execute all and singular, the powers, jurisdiction and authorities, and to receive and enjoy all and singular the emoluments unto said office, lawfully belonging or in any wise appertaining by virtue of the constitution and laws of the Commonwealth. He is, therefore, to have and to hold the said office for the term of five years, to be computed from the first Monday of May, A. D. one thousand nine hundred and three, if he shall so long behave himself well.

Given under my hand and the Great Seal of the State, at the City of Harrisburg, this ninth day of April, in the year of our Lord one thousand nine hundred and three, and of the Commonwealth the one hundred and twenty-seventh.

By the Governor,

FRANK M. FULLER,

SAMUEL W. PENNYPACKER.

*Secretary of the Commonwealth.*

### Letter of Attorney.

Know All Men By These Presents, That I, H. W. Longfellow, of Athens, Bradford County, Pennsylvania, have made, constituted and appointed, and by these presents do make, constitute and appoint P. B. Shelley, of the same place, my true and lawful attorney for me, and in my name to receive the principal and interest due on a certain bond, secured by a mortgage, given by Francis Bacon, of Towanda, of said county and State, to me, the said H. W. Longfellow, dated the seventh day of November, A. D. 1899, and recorded in the office for recording deeds, etc., in and for the said county, in Mortgage Book No. 80, page 78, etc., to secure the payment of the sum of three thousand dollars, with interest, as therein expressed, upon all that certain (here describe the land as in the deed), and on receipt of said principal, interest and costs, to appear for me and in my name in the aforesaid office for recording deeds, etc., and there to acknowledge and enter satisfaction on the margin of the record of said mortgage; and also for me and in my name to make the necessary transfer of any policy or policies of insurance upon the mortgaged premises which may now stand in my name, giving and granting unto my said attorney full power and authority to do and perform all lawful acts requisite for effecting the premises, hereby ratifying and confirming all that the said attorney, or substitute or substitutes, shall do therein by virtue of these presents.

In witness whereof I have hereunto set my hand and seal the fourth day of June, in the year of our Lord one thousand nine hundred and six.

Signed, sealed and delivered in	}	H. W. LONGFELLOW (Seal).
the presence of		
OLIVER GOLDSMITH,		
JOHN DRYDEN.		

## CHARTERS.

**Classes of Corporations.** In this State we have two classes of corporations, viz., first and second class.

**First Class.** Those created for charitable, religious, patriotic, social and educational purposes.

**Second Class.** Those created for the purpose of business carried on for profit.

### FIRST CLASS.

**Where Power to Grant Charter is Lodged.** In the Court of Common Pleas.

**Application for Charter.** Under Act 29th April, 1874, it must be subscribed by five or more persons, three of whom, at least, are citizens of the State, and set forth (a) the name of the proposed corporation, (b) the purpose for which it is formed, (c) the place or places where its business is to be transacted, (d) the term for which it is to exist, (e) the names and residences of the subscribers, and the number of shares subscribed by each, (f) the number of its directors, and the names and residences of those who are chosen directors for the first year, (g) the amount of capital stock, if any, and the number and par value of shares into which it is divided. The application must be acknowledged by at least three of those who subscribe to it before the recorder of deeds or a notary public.

**Notice of Application.** It must be given by publication in two newspapers of general circulation, for three weeks, setting forth the character and object of the proposed corporation, and the time when the application will be presented to the court.

**Presentation of Application.** Must be made to a law judge of the Court of Common Pleas, accompanied with proof of the publication of notice.

**Duty of Judge.** He is required to peruse and examine the application or certificate of association, and if the same shall be found by him to be in proper form and within the purposes named in the law relating to corporations of the first class, and not unlawful or injurious to the community, he is required to indorse on the application these facts, and to order and decree that the charter be approved.

**Recording Charter.** The life of the corporation does not begin until the application or certificate of association, and the order or decree of the law judge thereon, are recorded in the office for recording deeds in and for the county in which the charter is granted.

Following are the forms used in procuring a charter for a corporation of the first class, in conformity to the act referred to and its supplements:

### Form of Application.

IN RE	}	
Application for the incorpora-		
tion of the Lithuanian Independ-		
ent Political and Social Club of		
Wilkes-Barre.		In the Court of Common Pleas of Luzerne County.

*To the Honorable, the Law Judges of the Court of Common Pleas of said County:*

In compliance with the requirements of an act of the General Assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, the undersigned, five of whom are citizens of this Commonwealth, having associated themselves together for the purposes hereinafter specified, and desiring that they may be duly incorporated according to law, do hereby certify:

I. The name of the intended corporation is Lithuanian Independent Political and Social Club of Wilkes-Barre.

II. The said corporation is formed for the social enjoyment of its members, and to instruct them in the English language, and as to their rights and duties as citizens of the United States.

III. The said business of the said corporation is to be transacted in the City of Wilkes-Barre, Luzerne County, Pennsylvania.

IV. The corporation is to exist perpetually.

V. The corporation has no capital stock.

VI. The number of the officers of said corporation is fixed at four, and the names and residences of those who are chosen for the first year are:

<i>Name.</i>	<i>Office.</i>	<i>Residence.</i>
William Knitkowski -----	President -----	Wilkes-Barre, Pa.
William Baker -----	Vice-President -----	Wilkes-Barre, Pa.
George Knitkowski -----	Secretary -----	Wilkes-Barre, Pa.
William Sztrimaitis -----	Treasurer -----	Wilkes-Barre, Pa.

Witness our hands and seals this first day of March, 1902.

WILLIAM KNITKOWSKI	(Seal).
WILLIAM BAKER	(Seal).
GEORGE KNITKOWSKI	(Seal).
WILLIAM SZTRIMAITIS	(Seal).
JOSEPH DANKSZYS	(Seal).
JOSEPH KOONS	(Seal).

STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE. } ss.:

Before me, a notary public, in and for the Commonwealth of Pennsylvania, residing and having my office in the said City of Wilkes-Barre, personally appeared William Knitkowski, William Baker and Joseph Koons, three of the subscribers to the foregoing certificate, and in due form of law acknowledged the same to be their act and deed.

MICHAEL McANIFF (Seal).  
Notary Public.

**Form of Notice.** Same as that respecting the application immediately following this.

**Form of Proof of Publication of Notice.** Same as that relating to the application immediately following this.

**Decree.** Now, to wit, April 21, 1902, the within certificate of incorporation having been on file in the office of the prothonotary of this county since the 24th day of March, 1902, as appears from the entry thereon, and due proof of the publication of the notice required by law having been presented to me, I hereby certify that I perused and examined the said instrument and found the same to be in proper form, and within the specified purposes of corporations of the first class, according to the second section of the Act 29th April, 1874, and that the said purposes are lawful and not injurious to the community. It is therefore ordered and decreed that the same be approved, and that upon recording said charter and its indorsements and this order in the office of the recorder of deeds, in and for said county, the subscribers thereto, and their associates, shall thenceforth be a corporation for the purposes and upon the terms and under the name therein stated.

GEO. S. FERRIS, *Judge*.

By an act approved 6th April, 1893, provision is made for the incorporation and regulation of secret fraternal beneficial societies, orders or associations.

**Where Power to Grant Charter is Lodged.** In the Court of Common Pleas.

**Application for Charter.** I. Must be subscribed by five or more persons, citizens of this Commonwealth, and be acknowledged by at least five of the subscribers before any officer authorized to take the acknowledgment of deeds. II. Must set forth (a) the name of the intended corporation, (b) the purpose for which it is formed, (c) the place where its principal office is to be located, (d) the names and residences of the subscribers, and (e) the number and names of its officers, with the term or terms of years for which they have been chosen, and also the names of not less than six directors, managers or members of an executive committee who, together with the president of the society, order or association, shall form a board of directors, managers or executive committee, with the term or terms of years for which each is to serve.

**Notice of Application.** Same as required of all other proposed corporations.

**Presentation of Application.** Must be made to a law judge of the Court of Common Pleas, accompanied with proof of publication of notice.

**Duty of Judge.** Same as that to be performed by him in passing upon applications of other proposed corporations, and hereinbefore stated.

**Recording of Charter.** Corporation does not exist until its charter is recorded in the recorder's office.

**When Corporation May Begin Business.** Not until at least twenty-five persons have subscribed in writing to be beneficiary members therein, in the aggregate amount of at least five thousand dollars, and have each paid in one full assessment in cash, amounting in the aggregate to at least one per centum of the amount in which they are beneficiaries, nor until a certificate signed and sworn to by three of the highest officers of the corporation has been filed with the insurance commissioner, stating that the requirements of this section have been complied with.

Following are the forms used in proceedings to obtain charter for corporations authorized by this law :

**Form of Application.**

IN RE INCORPORATION OF THE FRATER- NITY OF HOME PROTECTORS.	}	In the Court of Common Pleas of Luzerne County. No.           , October Term, 1905.
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*To the Honorable, the Law Judges of the said Court:*

In compliance with the requirements of the Act of Assembly of the Commonwealth of Pennsylvania, approved the 6th day of April, 1893, and entitled "An act regulating the organization and incorporation of secret fraternal beneficial societies, orders or associations, and protecting the rights of members therein," Jas. M. Coughlin, Wm. G. Weaver, John I. Mathias, Wm. R. Richardson, J. Blair Andrews, Lewis B. Mathias, Chas. H. Barlow, John M. Beaumont, Francis Oplinger, Frank Puckey, Otis K. Stuart, George H. Lawrence, P. W. Siebert, Arthur R. Kasson, Samuel Williams, Jr., C. E. Downing and Edward C. Dean, at least nine of whom are citizens and residents of the Commonwealth of Pennsylvania, to wit, Jas. M.

Coughlin, John I. Mathias, Lewis B. Mathias, C. H. Barlow, John M. Beaumont, Wm. G. Weaver, Francis Oplinger, Frank Puckey and G. H. Lawrence, having associated themselves together as a secret fraternal beneficial society, for the purpose of providing for the payment of death, sick and disability claims to such of its members as may be entitled thereto under its constitution and general laws, by a system of collection from its members of admission fees, dues and assessments, and for such other mutual benefits as shall be set forth in this certificate, do hereby declare, set forth and certify that the following are the character, purposes, objects, articles and conditions of their association for and upon which they desire to be incorporated:

I. The name of the said proposed corporation is "Fraternity of Home Protectors."

II. The purpose for which the said corporation is formed is the maintenance of a secret beneficial society, the object of which said society is to provide, in its constitution and general laws, for the payment to its members of sick, disability and death claims, in such amounts as may be authorized and directed in said constitution and general laws, by collection from said members of admission fees, dues and assessments.

III. The place where the principal office of the corporation is and will be located is the City of Wilkes-Barre, Luzerne County, Pennsylvania.

IV. The said intended corporation has no capital stock.

V. The said corporation is to exist perpetually.

VI. The subscribers are all citizens of the Commonwealth of Pennsylvania, and their names and residences are as follows:

Jas. M. Coughlin	-----	Wilkes-Barre, Pa.
Lewis B. Mathias	-----	Philadelphia, Pa.
John M. Beaumont	-----	Scranton, Pa.
Francis Oplinger	-----	Wilkes-Barre, Pa.
G. H. Lawrence	-----	Plymouth, Pa.
John I. Mathias	-----	Mahanoy City, Pa.
C. H. Barlow	-----	Wilkes-Barre, Pa.
Wm. G. Weaver	-----	Wilkes-Barre, Pa.
Frank Puckey	-----	Wilkes-Barre, Pa.

VII. The number of the officers of the corporation is five, to wit: Supreme President, Supreme Vice-President, Supreme Secretary, Supreme Treasurer and Supreme Medical Examiner.

VIII. The names of the persons who have been chosen said officers, and the term each is to serve, are as follows:

<i>Name.</i>	<i>Office.</i>	<i>Term.</i>
Jas. M. Coughlin-----	Supreme President -----	Two years.
John I. Mathias-----	Supreme Vice-President----	Two years.
Lewis B. Mathias-----	Supreme Secretary -----	Two years.
Chas. H. Barlow-----	Supreme Treasurer -----	Two years.
Wm. G. Weaver-----	Supreme Medical Examiner--	Two years.

IX. The names of the members of the executive committee chosen, and the term of each, are as follows:

Jas. M. Coughlin, two years; Lewis B. Mathias, two years; Wm. G. Weaver, two years; C. E. Downing, two years; John I. Mathias, two years; Chas. H. Barlow, two years, and John M. Beaumont, two years.

Witness our hands and seals this 5th day of October, 1905.

JOHN M. BEAUMONT (Seal).  
WM. G. WEAVER (Seal).  
FRANCIS OPLINGER (Seal).  
FRANK PUCKEY (Seal).  
JAS. M. COUGHLIN (Seal).  
JOHN I. MATHIAS (Seal).  
LEWIS B. MATHIAS (Seal).  
C. H. BARLOW (Seal).  
G. H. LAWRENCE (Seal).

STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE. } ss.:

Before me, a notary public for and in the Commonwealth of Pennsylvania, residing in the City of Wilkes-Barre, personally appeared Lewis B. Mathias, Wm. G. Weaver, Jas. M. Coughlin, C. H. Barlow and John I. Mathias, five of the subscribers to the above certificate of incorporation of the "Fraternity of Home Protectors," and in due form of law acknowledged the same to be their act and deed.

Witness my hand and notarial seal this 5th day of October, 1905.

WILLIAM P. WALSH (Seal),  
*Notary Public.*

My commission expires January 1, 1909.

STATE OF PENNSYLVANIA, }  
 COUNTY OF LUZERNE. } ss.:

Before me, a notary public for and in the Commonwealth of Pennsylvania, residing in the City of Wilkes-Barre, personally appeared Lewis B. Mathias, Wm. G. Weaver, Jas. M. Coughlin, Chas. H. Barlow and John I. Mathias, who, being duly sworn according to law, depose and say that they are incorporators of the aforesaid "Fraternity of Home Protectors," and that all the above subscribers are citizens of Pennsylvania, and that the facts set forth in this certificate are true and correct.

LEWIS B. MATHIAS,  
 WM. G. WEAVER,  
 JAS. M. COUGHLIN,  
 C. H. BARLOW,  
 JOHN I. MATHIAS.

Sworn and subscribed before }  
 me this 5th day of October, 1905. }

WILLIAM P. WALSH (Seal),  
*Notary Public.*

My commission expires January 1, 1909.

### **Form of Notice.**

In the Court of Common Pleas of Luzerne County, No. 1,347, October Term, 1905.

Notice is hereby given that an application will be presented to one of the law judges of Luzerne County, in court room No. 1, of the court house of said county, on Monday, October 30th, 1905, at 9:30 o'clock, A. M., under the Act of Assembly approved April 6, 1893, entitled "An act regulating the organization and incorporation of secret fraternal beneficial societies, orders or associations, and protecting the rights of the members therein," for the charter of an intended corporation to be called "Fraternity of Home Protectors,"

the character of which said proposed corporation is a secret fraternal beneficial society, and its object is to provide for the payment to its members sick, disability and death claims by a system of collection from its members of admission fees, dues and assessments, and for this purpose to have, possess and enjoy all the rights, benefits and privileges conferred by the said Act of Assembly.

F. M. NICHOLS, *Solicitor*.

### **Decree.**

And now, 3rd day of November, 1905, upon presentation of the within charter of incorporation, accompanied by proof of publication of notice of this application, such as is required by the Act of Assembly and the rules of court, and it appearing that said application has been on file in the prothonotary's office of this county since the 5th day of October,—after having perused and examined the said instrument and finding the same in proper form, and within the purposes named in the Act of Assembly, approved the 6th day of April, A. D. 1893, entitled "An act regulating the organization and incorporation of secret fraternal beneficial societies, orders or associations, and protecting the rights of the members therein," and lawful and not injurious to the community, and in accordance with the terms, conditions, purposes and objects of said Act of Assembly, it is ordered and decreed that the said charter of the "Fraternity of Home Protectors" be and the same is hereby approved, and upon recording the same, and this order, the subscribers thereto and their associates shall be a corporation in the name of "Fraternity of Home Protectors," for the purposes and upon the terms and possessing the powers in said application, and in said Act of Assembly prescribed and granted.

G. L. HALSEY, *Judge*.

### **Proof of Publication.**

STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE, } ss. :

Geo. S. Boyle, of the city of Wilkes-Barre, county and state aforesaid, being duly sworn according to law, deposes and says that he is the editor of a weekly newspaper of general circulation, published in said city and county, called "The Industrial Gazette," and that an

advertisement, of which the annexed slip, cut from said newspaper, is a copy, was published in said newspaper for four consecutive weeks, viz., in the issues under dates of October 6th, 13th, 20th and 27th, 1905.

Sworn and subscribed before me }  
this 28th day of October, 1905. }

GEO. S. BOYLE.

T. W. TEMPLETON, *Prothonotary*.

NOTE—The “slip” referred to should be attached to the affidavit.

STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE, } ss.:

W. E. Woodruff, of the City of Wilkes-Barre, County and State aforesaid, being duly sworn according to law, deposes and says that he is the assistant editor of a weekly newspaper of general circulation, published in said city and county, called “The Luzerne Legal Register,” and that an advertisement, of which the annexed slip, cut from said newspaper, is a copy, was published in said newspaper for four consecutive weeks, viz., in the issues under dates of October 6th, 13th, 20th and 27th, 1905.

Sworn and subscribed before me }  
this 28th day of October, 1905. }

W. E. WOODRUFF.

T. W. TEMPLETON, *Prothonotary*.

NOTE—The “slip” referred to should be attached to the affidavit.

## SECOND CLASS.

**Where Power to Grant Charter is Lodged.** In the Governor of the Commonwealth.

**Application for Charter.** The application must be subscribed by two or more persons, one of whom, at least, must be a citizen of this State, and set forth (a) the name of the proposed corporation, (b) the purpose for which it is formed, (c) the place or places where its business is to be transacted, (d) the term for which it is to exist, (e) the names and residences of the subscribers and the number of shares subscribed by each, (f) the number of its directors, and the

names and residences of those who are chosen directors for the first year, (g) the amount of its capital stock, if any, and the number and par value of shares into which it is divided, and the amount (not less than ten per cent. of the whole capital) which has been paid thereon. The application or certificate of association must have the same acknowledgment as that required in the application of a proposed corporation of the first class, and in it must appear an affidavit, sworn to and subscribed by at least three of the subscribers to said application, before the recorder of deeds or a notary public, of the truth of the statements therein contained.

**Notice of Application.** Same as in the case of application of a proposed corporation of the first class.

**Presentation of Application.** Must be made to the Governor, accompanied with proof of publication of notice.

**Duty of Governor.** He is required to examine the application or certificate of association, and, if it be in proper form and within the purposes named in the law respecting corporations of the second class, he approves the same, and thereon indorses his approval, and directs letters patent to issue.

**Recording Certificate.** Must be recorded, first, in the office of the Secretary of the Commonwealth, in a book provided for that purpose, and, second, with all its indorsements, in the office for the recording of deeds in and for the county where the chief operations of the corporation are to be carried on.

**Form of the Application.** Following is the application or certificate of association as it has to be presented to the Governor:

*To the Governor of the Commonwealth of Pennsylvania:*

SIR:—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled “An act to provide for the incorporation and regulation of certain corporations,” approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, all of whom are citizens of Pennsylvania, having associated themselves together for the purpose hereinafter specified, and desiring that they may be incor-

porated, and that letters patent may issue to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is "The Gardner's Creek Coal Company."

2nd. Said corporation is formed for the purpose of mining coal and preparing the same for market, and for buying and selling, shipping and transporting the same.

3rd. The business of said corporation is to be transacted in the City of Scranton, Lackawanna County, Pennsylvania.

4th. Said corporation is to exist perpetually.

5th. The names and residences of the subscribers, and the number of shares subscribed by each, are as follows:

<i>Name.</i>	<i>Residence.</i>	<i>No. of Shares.</i>
George Bancroft,	Philadelphia,	Ten.
Robert Burns,	Scranton,	Ten.
J. Fennimore Cooper,	Williamsport,	Five.
Charles Dickens,	Lancaster,	Five.
Fitz Greene Halleck,	Lebanon,	Fifteen.
Washington Irving,	Wilkes-Barre,	Seven.
G. D. Prentice,	Scranton,	Twenty-five.
Bayard Taylor,	Reading,	Thirty-five.
W. C. Bryan,	Harrisburg,	Ten.
John Milton,	Pittsburg,	Thirty.
Edgar A. Poe,	Erie,	Twenty.
Alexander Pope,	West Chester,	Five.
Walter Scott,	Franklin,	Ten.
William Shakespeare,	Allentown,	Ten.
Samuel Johnson,	Bloomsburg,	Ten.

6th. The number of directors of said corporation is fixed at five, and the names and residences of the directors who are chosen directors for the first year are as follows:

<i>Name.</i>	<i>Residence.</i>
W. C. Bryan,	Harrisburg.
G. D. Prentice,	Scranton.
George Bancroft,	Philadelphia.
Alexander Pope,	West Chester.
Edgar A. Poe,	Erie.

7th. The amount of the capital stock of said corporation is \$20,000.00, divided into two hundred shares of the par value of \$100.00, and \$2,000.00, being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence are John Wilton, Pittsburg, Pa.

Witness our hands and seals this tenth day of January, A. D. 1907.

ROBERT BURNS (Seal).  
 SAMUEL JOHNSON (Seal).  
 WASHINGTON IRVING (Seal).  
 BAYARD TAYLOR (Seal).  
 J. FENNIMORE COOPER (Seal).

STATE OF PENNSYLVANIA, }  
 COUNTY OF LACKAWANNA, } ss.:

Before me, a notary public in and for the county aforesaid, personally came the above named Robert Burns, Samuel Johnson, Washington Irving, Bayard Taylor and J. Fennimore Cooper, who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office the tenth day of January, A. D. 1907.

THOMAS HOOD (Seal).  
*Notary Public.*

STATE OF PENNSYLVANIA, }  
 COUNTY OF LACKAWANNA, } ss.:

Personally appeared before me this tenth day of January, A. D. 1907, Robert Burns, Samuel Johnson and Washington Irving, who being duly sworn according to law, depose and say that the statements contained in the foregoing instrument are true.

Sworn and subscribed before me }  
 the day and year aforesaid. } ROBERT BURNS,  
 SAMUEL JOHNSON.  
 WASHINGTON IRVING.

THOMAS HOOD (Seal).  
*Notary Public.*

**Form of Notice of Application.** Notice is hereby given that application will be made by Robert Burns, Samuel Johnson, Washington Irving, Bayard Taylor and J. Fennimore Cooper to the Governor of Pennsylvania, on the 15th day of March, 1907, at two o'clock in the afternoon, under the provisions of an Act of Assembly entitled "An act to provide for the incorporation and regulation of certain corporations," approved the 29th April, 1874, and the supplements thereto, for a charter for an intended corporation to be called "The Gardner's Creek Coal Company," the character and object of which is the mining of coal and preparing the same for market, and the buying, selling, shipping and transporting the same, and for these purposes to have, possess and enjoy all the rights, benefits and privileges by said Act of Assembly, and the supplements thereto conferred.

DANIEL WEBSTER.

*Solicitor.*

**Form of Proof of Publication of Notice.**

STATE OF PENNSYLVANIA, }  
COUNTY OF LACKAWANNA, } ss. :

Robert Burns, being duly sworn, doth depose and say that he is one of the corporators of the "The Gardner's Creek Coal Company;" that a notice, of which the above are copies, was published in the "Scranton Republican" and the "Scranton Times," both newspapers of general circulation, printed and published in the County of Lackawanna, State of Pennsylvania; that the said notice was published as follows: In the "Scranton Republican" on the 17th and 24th days of February, 1907, and on the third day of March of the same year; in the "Scranton Times," on the 19th and 26th days of February, 1907, and on the fifth day of March of the same year.

Sworn and subscribed before me this }  
tenth day of March, 1907. } ROBERT BURNS.

THOMAS HOOD, *Notary Public.*

NOTE—A copy of the notice published in each paper should be attached to the affidavit of publication.

**Indorsement of the Governor on Application.**

EXECUTIVE CHAMBER,  
Harrisburg, Pa., March 15, 1907.

*To the Secretary of the Commonwealth:*

Having examined the within application and found it to be in proper form, and within the purposes of the class of corporations specified in section two of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29th, A. D. 1874, and the several supplements thereto, I hereby approve the same and direct that letters patent issue according to law.

BENJAMIN FRANKLIN,  
*Governor.*

**Indorsement of the Secretary of the Commonwealth.**

PENNSYLVANIA, SS.:

Enrolled in Charter Book, No. 250, page 175.

Witness my hand and seal of office, at Harrisburg, this 17th day of March, 1907.

ALEXANDER MCCLURE,  
*Secretary of the Commonwealth.*

## LIMITED PARTNERSHIP.

**Purposes For Which It May Be Formed.** For the transaction of any agricultural, mercantile, mechanical, mining and transporting of coal or manufacturing business.

**By Whom It May Be Formed.** By two or more persons.

**Members of.** One or more shall be called general partners, and one or more special partners.

**Liability of Members.** The general partners are jointly and severally responsible as general partners.

**Special Partners.** Must contribute to the capital of the partnership, in actual cash, a specific sum.

**Liability of Special Partner.** Is not liable for the debts of the partnership beyond the fund contributed by him.

**How Organized.** The persons desirous of forming the partnership shall make and severally sign a certificate of association.

**Contents of Certificate.** I. The name of firm under which the partnership is to be conducted. II. The general nature of the business intended to be transacted. III. The names of all the general and special partners to be interested therein, distinguishing which are general and which are special partners, and their respective places of residence. IV. The amount of capital which each special partner shall have contributed to the common stock. V. The period at which the partnership is to commence, and the period at which it will terminate.

**Acknowledgment of Certificate.** Must be acknowledged by the several persons signing the same in the manner and before the same persons that deeds are acknowledged.

**Recording of Certificate.** Must be recorded and filed in the office of the recorder of deeds of the proper county in which the principal place of business of the partnership shall be situated, in a book provided for that purpose; and if the partnership shall have places of business situated in different counties, a transcript of the certificate and of the acknowledgment thereof, duly certified by the recorder in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner in the office of the recorder of every such county.

**Publication of Terms of.** The partners shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry, in two newspapers, to be designated by the recorder of deeds of the county in which such registry shall be made, and to be published in the county or counties in which their business shall be carried on; and if such publication be not made the partnership shall be deemed general.

### **Form of Certificate.**

This is to certify to all to whom these presents shall come that we, whose names are hereto subscribed, to wit, Samuel Highlander and Theodore Uppercrust, both of the City of Sunshine, County of Evergreen, and State of Prosperity; and Hiram Earlyriser, of the City of Wideawake, county and State aforesaid, have entered into a limited partnership for the business of manufacturing and selling shoe strings and chewing gum within the said State, under and by virtue of an Act of the General Assembly of the said Commonwealth, approved the 21st day of March, A. D. 1836, and entitled "An act relative to limited partnerships," and all and singular the supplements thereto, upon the terms, conditions and liabilities hereinafter set forth, to wit:

1. The said partnership is to be conducted under the name or firm of "Highlander and Uppercrust."

2. The general nature of the business to be transacted by the said firm or partnership is the manufacturing and selling of shoe strings and chewing gum.

3. The general partners in the said firm are Samuel Highlander and Theodore Uppercrust, both residing in the said City of Sun-

shine, and the special partner is Hiram Earlyriser, residing in the said City of Wideawake.

4. The special partner has contributed to the common stock of the said firm the sum of one thousand dollars in cash.

5. The said partnership is to commence immediately at and after the making and signing of this certificate, and is to terminate on the twenty-fifth day of September, in the year of our Lord one thousand nine hundred and twenty-seven.

Made and severally signed by the said partners, at the City of Sunshine aforesaid, the first day of September, in the year of our Lord one thousand nine hundred and seven.

SAMUEL HIGHLANDER,  
THEODORE UPPERCRUST,  
HIRAM EARLYRISER.

### **Form of Acknowledgment.**

STATE OF PROSPERITY, }  
COUNTY OF EVERGREEN, } ss. :

Before me, the subscriber, a notary public in and for the Commonwealth of Prosperity, and residing in the City of Sunshine, personally came and appeared on the first day of September, in the year of our Lord one thousand nine hundred and seven, the above named Samuel Highlander, Theodore Upper crust and Hiram Earlyriser, who, severally, in due form of law, acknowledged the foregoing certificate as and for their and each of their act and deed, to the end that the same might as such be recorded.

Witness my hand and notarial seal..

THOMAS PLUNKET,  
*Notary Public.*

### **Form of Advertisement of Limited Partnership.**

We, the subscribers, have this day entered into a limited partnership, agreeably to the provisions of the Act of Assembly of the Commonwealth of Prosperity, approved the first day of March, 1836, and entitled "An act relative to limited partnerships," and do hereby certify that the name of the firm under which said partnership is to be

conducted is Highlander and Upper crust; that the general nature of the business to be transacted is the manufacturing and selling of shoe strings and chewing gum, and the same will be transacted in the City of Sunshine; that the names of the general partners of said firm are Samuel Highlander and Theodore Upper crust, both of the said City of Sunshine, and the special partner is Hiram Earlyriser, of the City of Wideawake; that the capital contributed by the special partner is one thousand dollars in cash; that the period at which the said partnership is to commence is the twenty-fifth day of September, 1907, and that it will terminate on the twenty-fifth day of September, 1927.

WILLIAM HIGHFLYER, *Solicitor*.

In this State we have partnership associations that do not impose upon any of their members the liabilities of general partners. The formation of such partnerships is provided for in the act approved 2nd June, 1874. The powers and immunities of, and procedure to form the association prescribed in this law are as follows:

**How Formed.** When any three or more persons may desire to form a partnership association by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall be lawful for such persons to sign and acknowledge, before some officer competent to take the acknowledgment of deeds, a statement in writing, in which shall be set forth (a) the full names of such persons, and the amount of capital subscribed by each; (b) the total amount of capital, and when and how to be paid; (c) the character of the business to be conducted, and the location of the same; (d) the name of the association, with the word "limited" added thereto as part of the same; (e) the contemplated duration of said association, which shall not in any case exceed twenty years; (f) the names of the officers of said association, selected in conformity with the provisions of the act.

**Liability of Members.** Shall not be liable upon any judgment, decree or order, or any debt or engagement of the association, beyond unpaid portions of their subscriptions to the capital of the association.

**Style of Association.** The word "limited" shall be the last word of the name of every association formed under this act.

**Capital Subscribed in Property.** It is lawful for any member to make contribution to the capital of the association in real or personal estate, mines or other property, at a valuation to be approved by all the members subscribing to the capital of such association. Provided, that in the statement required to be recorded, subscriptions to the capital, whether in cash or in property, shall be certified in this respect according to the fact; and when property has been contributed as part of the capital, a schedule containing the names of the parties so contributing, with a description and valuation of the property so contributed, shall be inserted.

STATEMENT  OF  THE WYOMING MUSHROOM CO., LIMITED.	}	We, the undersigned, desiring to form a partnership association by subscribing and contributing capital thereto, which said capital shall alone be liable for the debts of said association, in compliance with the Act of Assembly, approved the 2nd day of June, 1874, P. L., page 271, do make, sign and acknowledge the following statement:
--	---	--

I. The full names of the persons constituting the membership of this association, and the amount of capital stock contributed by each, in cash and property, are as follows:

<i>Names.</i>	<i>In What.</i>	<i>No. Shares.</i>	<i>To'l Par Val.</i>
Richard O'Brien -----	Cash	Ten	\$ 500 00
David Tod -----	Cash	Ten	500 00
John Wood -----	Cash	Twenty	1,000 00
Rufus Saxton -----	Cash	Twenty	1,000 00
Louis Wigfall -----	Cash	Thirty	1,500 00
Edmund Ross -----	Property	Ten	500 00

II. The total amount of the capital of the association is five thousand dollars, twenty per cent. of the cash contributions thereto to be paid forthwith, and the remainder thereof whenever and in such installments as the managers of the association shall direct, and the property contributions, immediately upon the execution hereof, through delivery of possession, and such evidences of transfer in writing as are necessary to vest in the association absolute and unincumbered title to the same.

III. The valuation of the property subscribed is approved by all of the members subscribing to the capital of this association, and the following is a schedule containing the name of the person subscribing property, with a description and valuation of the same:

<i>Name.</i>	<i>Description.</i>	<i>Valuation.</i>
Edmund Ross,	Team of horses,	\$500.00

IV. The character of the business to be conducted by this association is the raising, cultivating, canning, buying and selling of mushrooms, and of carrying on a general market gardening and hothouse business, and the location of the said business is to be in the Borough of Wyoming, Luzerne County, Pennsylvania.

V. The principal office of the association is and will be in the City of Pittston, Luzerne County, Pennsylvania.

VI. The name of this association is "The Wyoming Mushroom Company, Limited."

VII. The contemplated duration of this association is twenty years from the date hereof.

VIII. The names of the officers of the association, selected in conformity with the provisions of the said Act of Assembly, are as follows:

DAVID TOD, Chairman,  
 RICHARD O'BRIEN,  
 JOHN WOOD,  
*Managers.*

RUFUS SAXTON, President,  
 LOUIS WIGFALL, Secretary,  
 EDMUND ROSS, Treasurer.

Witness our hands and seals this first day of September, in the year of our Lord one thousand nine hundred and seven.

RICHARD O'BRIEN (Seal).  
 DAVID TOD (Seal).  
 JOHN WOOD (Seal).  
 RUFUS SAXTON (Seal).  
 LOUIS WIGFALL (Seal).  
 EDMUND ROSS (Seal).

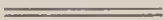
STATE OF PENNSYLVANIA, }  
COUNTY OF LUZERNE, } ss. :

Before me, a notary public in and for the Commonwealth of Pennsylvania, residing and having my office in the City of Pittston, of the county and State aforesaid, personally appeared the above named Richard O'Brien, David Tod, John Wood, Rufus Saxton, Louis Wigfall and Edmund Ross, and in due form of law acknowledged the foregoing statement to be their act and deed.

JEREMIAH M. TIPTOP,  
*Notary Public.*

QUESTIONS TO AID THE STUDENT IN THE STUDY OF  
THIS WORK, AND TO BE USED BY THE  
TEACHER IN RECITATIONS.

(Answers are on pages referred to.)



COURTS.

Name the kinds of power vested in the government of the state. ....	15
What is the power vested in courts called?.....	15
Name each court now existing in the state.....	15
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What public authority has power to install courts other than those named in the constitution?.....	15
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APPELLATE COURTS.

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What is appellate jurisdiction?.....	16
In what cases has this court original jurisdiction?.....	16
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What is a mandamus?.....	16
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Name the counties in each of these districts.....	17-18
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Of how many judges does the bench of this court consist?	18
What is the term of service allotted to each judge elected a member of this bench?.....	18
Of the judges of this court, who is the chief justice?.....	18
Give the salary paid to each member of the bench of this court. ....	18
Give the names of the judges of this court.....	18
How is a case transferred from a lower court into this court ....	18
What is an appeal?.....	18
The right to appeal must be exercised within what period of time? ....	18
What is the party taking the appeal called?.....	18
What is the party from whose judgment the appeal is taken called? ....	18
To get an appeal allowed by this court, what must be done?	18
Take and transcribe the praecipe and affidavit for an appeal to this court, as read by the teacher.....	19
Fold and indorse this paper.....	21
Take and transcribe the bond required in appeals to this court, as read by the teacher.....	20
Fold and indorse this paper.....	22

*Superior Court.*

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Into what classes is the jurisdiction of this court divided?	23
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What is the salary of each judge of this court?.....	24
Of the judges of this court, who is the president judge?..	24
Give the names of the judges of this court.....	24
How are appeals taken from the judgments of the lower courts into this court?.....	24
Take and transcribe the praecipe and affidavit for an appeal to this court, as read by the teacher.....	25

Fold and indorse this paper.....	27
Take and transcribe the bond required in appeals to this court, as read by the teacher.....	26
Fold and indorse this paper.....	28

### COURT OF COMMON PLEAS.

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What is the meaning of the term jurisdiction?.....	29
Give the subjects to which the jurisdiction of the law side of this court extends.....	29
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#### *Judicial Districts.*

For this court, how many judicial districts are in this state? .....	30-31
What is the population required of each judicial district?	30
How many judicial districts have territory consisting of more than one county?.....	31
How many judicial districts have territory consisting of one county? .....	31
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What is a jury?.....	35
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State the qualifications required of jurors.....	36
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What is the prothonotary?.....	36
Name his duties.....	36
Name his powers.....	36
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NOTE.—We suggest the use of this record in a practical illustration. Organize a court by selecting one student for judge; one for court clerk to administer affirmations and draw the names of jurors from the jury box; one to act as court stenographer; one for court crier; one for tipstaff; one to act as attorney for the plaintiff, and one to act in the same capacity for the defendant; one to personify the plaintiff, and one to personify the defendant, and as many as there are witnesses named in the record to act as witnesses. If possible, place in the jury box the names of thirty students, but in order to avoid depriving those chosen of this practice opportunity, like all the others, excepting the judge, attorneys and court clerk, participating in the trial, they should be required to take shorthand notes of the proceedings. Call students to act as witnesses. Have each affirmed by the court clerk. Have the questions given in the book read to the witnesses by the attorneys for the parties. To these questions the witnesses should give the answers given in the book. The judge should read the charge to the jury, and also the rulings on objections to proposed evidence. Have the jury retire in charge of the tipstaff, and return or attempt to return a verdict in the manner given. After the case has been submitted to the jury, have all the students transcribe their notes without using the book for that purpose.

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- Take and transcribe the statement required for the formation of this partnership, including the acknowledgment of the same, as read by the teacher.....217-219

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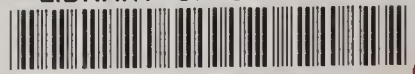
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